(1)

Supreme Court, U.S.
FILED

No. 01 275 AUG 14 2001

OFFICE OF THE CLERK

---

In The

# Supreme Court of the United States

◊

SAMUEL K. JACOBS, *and* NANCY HECKERMAN,

*Petitioners,*

v.

THE AMERICAN EXPRESS COMPANY, INC., et al,

*Respondents.*

◊

*ON PETITION FOR A WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE DISTRICT OF COLUMBIA*

◊

## PETITION FOR A WRIT OF CERTIORARI

◊

Samuel K. Jacobs, and
Nancy Heckerman
1155 Connecticut Avenue
Suite 300
Washington, D.C. 20036
(202) 429-6545

---

143 pp

## QUESTIONS PRESENTED

This Writ of Certiorari has been filed to determine if the lower courts have violated their constitutional duties by failing to enforce the enactments of Congress which have caused the denial of due process of law, equal protection of the laws, and trial by jury.

1. Has hindering, preventing, or delaying the enforcement and the execution of the enactments of Congress through the "force" of the lower courts caused the denial of the Petitioners' Constitutional rights of due process of the law pursuant to Amendment V and Amendment XIV and equal protection of the laws pursuant to Amendment XIV ?

2. Have the lower courts the right to deny a litigant a trial by jury pursuant to Amendment VII and Article VI ?

3. Have the Officers of the Executive branch failed to *"take Care that the Laws be faithfully executed,"* pursuant to Section 3 of Article III?

4. Has the Court of Appeals for the District of Columbia taken an action to prevent, hinder, and delay the enactment of Title 28 U.S.C.A. § 1291 that is in conflict with this the interpretation of the Supreme Court of the United States and the other Circuits?

5. What authority and rationalization have the lower courts and the Attorney General of the

United States used to deny the Petitioners *any* Constitutional rights in violation of Section 2 of Article IV which states that: *"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States"*; and, in conjunction, to refuse to enforce or execute the Laws in violation of Article VI: *"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,. . . "* ?

6. Are the District Court, the Court of Appeals, and the Attorney General of the United States immune from penalties and punishment for joining and supporting the "force of numbers" of The American Express Company, Inc., et al, to hinder, prevent, or delay the execution of the enactments of Congress in violation of Title 18 U.S.C.A. § 2384?

◊

## TABLE OF CONTENTS

Page

QUESTIONS PRESENTED........................ i

OPINIONS BELOW................................. 1

JURISDICTION...................................... 1

CONSTITUTIONAL AND
  STATUTORY PROVISIONS.................... 2, 3

STATEMENT OF CASE ....................... 3

  1. DISPUTE BETWEEN PARTIES........... 4

  2. EVENTS DURING THE COURT
    PROCEEDINGS................................ 7

    I. DISTRICT COURT......................... 7

    II. COURT OF APPEALS....................

    III. ATTORNEY GENERAL OF THE
      UNITED STATES.......................... 8

    IV. AFFIDAVIT.................................. 9

REASONS FOR GRANTING CERTIORARI... 9

    I. DISTRICT COURT......................... 11

    II. COURT OF APPEALS.................... 20

    III. ATTORNEY GENERAL OF THE
      UNITED STATES.......................... 23

    IV. AFFIDAVIT.................................. 25

SEDITIOUS CONSPIRACY....................... 26

CONCLUSION....................................... 30

## TABLE OF AUTHORITIES

Page

CASES

*Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42, (1976)........................................................10

*United States v.Grinnell Corp.*,384 U.S. 563......11

*Liteky v. U. S.*, 510 U.S. 540...........................11

*Minor v. Happerstett*, 88 U.S. 162, 21 Wall. 162, 22 l.Ed. 627, (1874) .............12

*International Ladies' Garment Workers' Union et al v. Donnelly Garment Co. et al*, 304 U.S. 243, 249........ ..........................13

*Wolfson v. Palmieri*, 396 F.2d 121, 124 (2nd Cir. 1968)....................................14

*Berger v. United States*, 255 U.S. 22.................15

*Williams v. U.S.*, C.A.Fla.1950, 179 F.2d 644, affirmed 71 S.Ct. 581, 341 U.S. 70, 95 L.Ed. 758 ...........................16

*U.S. v. Greathouse*, et al. 26 Fed. Cas.No. 15,254.............................17

*H.J. Inc. v. Northwestern Bell Tel. Co.*, 429 U.S. 229.......................................... 18

## TABLE OF AUTHORITIES

Page

CASES

*Town of Grand Chute v. Winegar,*
82 U.S. 375 ..............................................18
*Dimick v. Schiedt,* 293 U.S. 474, 485-486 ......19
*Leonhard v. U.S.,* C.A.N.Y.1980, 633 F.2d 599...21
*Great Coastal Express, Inc. v.*
*International Broth. of Teamsters,*
*Chauffeurs, Warehousemen & Helpers*
*of America,* D.C.Va.1980, 86 F.R.D. 131....... 21
*Green v. Ancora-Citronelle Corp.,*
C.A.Cal 1973, 577 F.2d 1380 ......................21
*In re Underwriters at Lloyd's,*
C.A. 4 (Md.) 1981, 666 F.2d 5......................22
*Mitchell v. Forsyth,* Pa. 1985,
105 S.Ct. 2806, 472 U.S. 511......................22
*Swift & Co. Packers v. Compania*
*Colombiana Del Caribe,* Canal Zone
1950, 70 S.Ct. 861, 339 U.S. 684..................22
*U.S. v. Sorren,* C.A. 1 (Puerto Rico) 1979,
605 F.2d 1211...............................................23
*United States v. Matthews,* 146 Fed.Rep. 306....24

## TABLE OF AUTHORITIES

Page

CASES

*Haas v. Henkel,* 216 U.S. 462, 467............24, 25

*Hammerschmidt v. U.S.,*265 U.S. 182, 183....... 24

*Charge To The Grand Jury-Treason.*

30 Fed. Case No. 18,274....................,...26, 27

*Case of Fries,* 9 Fed Case No. 5,127...........26, 27, 28, 29

*U.S. v. Insurgents,* 26 F.Cas.No. 499, 502.........27

*Foster, 211,* *Blackstone's Commentaries*..........27

*Ex Parte Bollman and Swartwout,* 4 U.S. 75......27

STATUTES

15 U.S.C. § 1600, et seq..............................4, 5

18 U.S.C. § 242 ..................................... 7, 16

18 U.S.C. § 371 .......................................7, 24

18 U.S.C. § 1341..........................................9

18 U.S.C. § 1346..........................................9

18 U.S.C. § 1506.....................................9, 25

18 U.S.C. § 1512.....................................9, 25

18 U.S.C. § 1951...................................... 5

18 U.S.C. § 1956.................................... 4, 9

## TABLE OF AUTHORITIES

Page

STATUTES

18 U.S.C. § 1961 .......................................... 4,5
18 U.S.C. § 2071 .............................................. 9
18 U.S.C. § 2384 ....................................... 26, 29
28 U.S.C. § 144 ................................... 7, 14, 15
28 U.S.C. § 372 ................................... 7, 14, 15
28 U.S.C. § 455 .................................... 7,14, 15
28 U.S.C. § 1291 ............................................ 22
28 U.S.C. § 1651 .............................................. 8
28 U.S.C. § 2403 ......................................... 8, 12

OTHER AUTHORITIES

U.S. Constitution, Article II, Section 3............23
U.S. Constitution, Article III, Sections 3....27, 29
U.S. Constitution, Article IV, Section 2........i, 25
U.S. Constitution, Amendment V........10, 12, 30
U.S. Constitution, Article VI, Paragraph 2.........i
U.S. Constitution, Amendment VII.............7, 10, 18, 30
U.S. Constitution, Amendment XIV, Section 1............................. 10, 12, 21, 30

Federal Rules of Civil Procedure:
Rule 8 (d) ....................26
Rule 12 (b)(6)....................20
Rule 38 ....................7,18
Rule 60(b)....................21
Federal Rules of Appellate Procedure:
Rule 44....................8,12
United States District Court for the
District of Columbia :
Local Rule 40.5....................12

House of Representatives Judicial Committee:
P.L. 93-512, (concerning the amendments to
Title 28 U.S.C.A. § 455 in 1974)....................15

◊

## OPINIONS BELOW

*Samuel K. Jacobs, et al, v. The American Express Company, Inc., et al,* (App. 5)
Case No. 99-2809 (Dist. of Col. Cir., 1999)

*Samuel K. Jacobs, et al, v. The American Express Company, Inc., et al,* (App. 28)
Case No. 00-7254 (Dist. of Col. Apps., 2000)

◊

## JURISDICTION

An opinion of the District Court in the District of Columbia was issued on the same date that the appeal was filed, October 12, 2000, and appears in the Appendix hereto. The opinion of the Court of Appeals was entered on March 15, 2001. A timely petition for rehearing and rehearing en banc was denied on May 17, 2001, and this petition was timely filed within 90 days as permitted by Rule 13(3).

This Court's jurisdiction is invoked under Title 28 U.S.C.A. § 1254 (1), which provides that cases in the courts of appeals may be reviewed by the Supreme Court of the United States Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

◊

## CONSTITUTIONAL PROVISIONS

*Article II, Section 3*
*Article III, Section 3*
*Article IV, Section 2*
*Article VI, Paragraph 2*
*Amendment V*
*Amendment VII*
*Amendment XIV, Section 1*

◊

## STATUTORY PROVISIONS

*United States Code, Title 15 § 1600, et seq.*

*United States Code, Title 18:*
- *§ 242*
- *§ 371*
- *§ 1341*
- *§ 1346*
- *§ 1506*
- *§ 1512*
- *§ 1951*
- *§ 1956(c)(7)(D)*
- *§ 1961*
- *§ 2071*
- *§ 2384*

*United States Code, Title 28:*
- *§ 144*
- *§ 372*
- *§ 455*
- *§ 1291*
- *§ 1651*
- *§ 2403*

Other Authorities:

*Federal Rules of Civil Procedure*
*Rule 38*
*Rule 60 (b)*

*Federal Rules of Appellate Procedure*
*Rule 44*

*United States District Court for the*
*District of Columbia:*
*Local Rule 40.5*

◊

## STATEMENT OF THE CASE

The Petitioners are Samuel K. Jacobs and Nancy Heckerman. The Respondents are The American Express Company, Inc., The American Express Travel Related Services, The American Express Platinum Corporate Card, The American Express Personal Gold Card, The American Express Small Business Services, The American Express Centurion Bank, (all of which are incorporated under the laws of the United States and other countries), and the following parties: Harvey Golub, Roberta Golub, Kenneth Chenault, Kathryn C. Chenault, Ruth Raina, a.k.a. Ruth Champion, Ralph Maresca, Hamilton Loeb, Carol Kelley, and Paul, Hastings, and Janofsky & Walker, LLP.

## 1. DISPUTE BETWEEN PARTIES

A dispute arose between (a) The American Express Company, Inc., et al, the Respondents herein, and (b) Samuel K. Jacobs and Nancy Heckerman, the Petitioners herein. Petitioners have alleged that The American Express Company, Inc., et al, consistently, deliberately, and continuously violated the laws as enacted by Congress which govern the Respondents' enterprises pursuant to Title 15 U.S.C.A. § 1600, et seq., commonly referred to as the Consumer Protection Act, which includes the Fair Debt Collection Act, the Truth in Lending Regulation Z Act, the Equal Credit Opportunity Act, and the Fair Credit Reporting Act, Fair Credit Billing Act. Petitioners further allege that these acts were perpetrated through violations of the Racketeering Influenced Criminal Organizations Act (RICO) as defined under Title 18 U.S.C.A. §1961(1), and "specified unlawful activities" under Title 18 U.S.C.A. § 1956(c)(7)(D).

The Petitioners claim that *The American Express Company, Inc., et al,* Respondents: 1) issued credit/charge cards to the Petitioners after soliciting them as consumers with claims of *"no pre-set spending limit,"* which was fraudulent because the cards do have a predetermined spending limit; 2) while the Petitioners were abroad on a business trip the employees for the Respondents attempted to extort $15,000 by wire transfer from the Petitioners before, and in addition to, the approval for any charges, or the threat was given that the Petitioners' credit cards would be canceled leaving them stranded in a foreign country in violation of Title 18 U.S.C.A. § 1951; 3) this amount demanded was in access of forty-five per cent in violation of the usury laws pursuant to Title 18 U.S.C.A. § 1961(4); and, after those violations were attempted, the Respondents still cancelled the credit cards while Petitioners were abroad. After the Petitioners returned to the United States, having obtained the aid of business associates in India, the Respondents failed to respond to Petitioners' five specific letters of dispute about these incidents which were written pursuant to Title 15 U.S.C.A. § 1600 et seq. (*See* App. 61-72).

The following additional punitive damages have resulted from the injuries to the Petitioners personally and to their business. The Respondents: 5) violated their own Equipment Finance Agreement by financing and charging fees and interest for nonexistent equipment; 6) entered fraudulent credit reports against the Petitioners and members of their families to credit reporting agencies and other credit related associations; 7) entered false information concerning the Petitioners' Social Security Numbers to the court and the credit reporting agencies; and, 8) entered fraudulent information concerning the Petitioners' corporations to the State of Maryland and the credit reporting agencies and affiliates.

Petitioners relied upon the credit approval for $20,000 plus worth of business related expenses, (which was given by representative Clara of the Corporate Card division at 9:20 A.M. on June 4, 1999, before the trip), including the purchase of jewelry in India for resale in the United States to subsidize the fledgling computer business since Petitioner Jacobs has been in the family jewelry years for over 40 years. Petitioners have never denied owing the money for any of the charges on their credit/charge cards for that business trip. Petitioners were ready, willing and able to pay for the charges as demonstrated with exhibits of bank account statements submitted to the District Court.

The Petitioners have alleged that their company lost extensive software programming contracts due to their failure to procure the services of computer programming subcontractors abroad because of the aborted trip due to the actions of the Respondents. The Petitioners' company and their personal reputations and credit history have suffered adverse and irreparable damage due to the false and convoluted reports concerning the Petitioners' identities, and these overt acts have affected their ability to regain the good credit that they had before the intervention by The American Express Company.

The Petitioners filed a 'Complaint Under the Racketeering Influenced Criminal Organizations Act (RICO)' on October 25, 1999, *Samuel K. Jacobs, et al, v. The American Express Company, Inc., et al,* Case Number 1:99CV-2809, The Honorable Judge Colleen Kollar-Kotelly presiding, in the United States District Court for the District of Columbia which was amended on April 10, 2000, to include new defendants and new evidence which occurred during the proceedings in the lower court.

## 2. EVENTS DURING THE COURT PROCEEDINGS

I. DISTRICT COURT: The following events occurred during the lower courts' proceedings as follows, to-wit: 1) The Hon. Colleen Kollar-Kotelly issued an Order on March 14, 2000, which combined this case with another case of separate issues and parties which was also before her Court, and it formed a criminal conspiracy against the Petitioners in violation of Title 18 U.S.C.A. § 242, and §371; 2) Petitioners filed a petition for a change of judge for bias and prejudice pursuant to Title 28 U.S.C.A. § 144, § 372, and § 455; 3) Judge Kollar-Kotelly issued an Order on June 14, 2000, denying the motion to recuse herself from the case; and, 4) Petitioners filed a Notice of Appeal on October 12, 2000, which was the same day Judge Kollar-Kotelly issued an Order which both granted and denied the Respondents' request for summary judgment, remanded the RICO case to the District of Columbia Superior Court, and, thus, denied the trial by jury demanded by the Petitioners pursuant to Amendment VII of the Constitution and Rule 38 of the Federal Rules of Civil Procedure.

II. COURT OF APPEALS: After the case reached the Court of Appeals for the District of Columbia, the following proceedings occurred, to-wit: 1) The Clerk of the Court of Appeals failed to inform the Attorney General of the United States of a Constitutional Question pursuant to

Rule 44 of the Federal Rules of Appellate Procedure and Title 28 U.S.C.A. § 2403; 2) the Court of Appeals failed in its duty to interpret the Constitutional Questions pursuant to FRAP Rule 44; and, 3) the Court of Appeals issued an order to dismiss Petitioners' appeal on March 15, 2001.

Furthermore, 4) Petitioners filed a Petition for Rehearing and Rehearing En Banc on April 15, 2001, with an attached Affidavit containing substantial newly discovered evidence of specific international money laundering activities of The American Express Company, Inc., et al; 5) the Court of Appeals denied the rehearing and rehearing en banc on May 17, 2001; 6) a timely petition for reconsideration, and Writ Of Mandamus To Compel Attorney General To Interpret Constitutional Question; Writ Of Mandamus To Show Cause And Compel Clerk Of Court To Perform Duty; and a Writ Of Mandamus To Compel Assumption And Exercise Of Jurisdiction pursuant to Title 28 U.S.C.A. § 1651 were filed on May 31, 2001; and, 7) a mandate was issued on June 6, 2001, for the Order of the Court of Appeals issued on March 15, 2001.

III. ATTORNEY GENERAL OF THE UNITED STATES: The Petitioners mailed a copy of the initial complaint to the Office of the Attorney General in November, 1999. On May 9, 2001, the Petitioners hand delivered the appeals court documents to The Honorable John Ashcroft, Attorney General of the United States. All of the documents were returned to Petitioners on May 15, 2001, by Executive Officer Gwendolyn L. Turner on behalf of The Hon. John Ashcroft. (See App.27). The removal of these documents was in violation of: Title 18 U.S.C.A. § 1506; Title 18 U.S.C.A. § 1346; Title 18 U.S.C.A. § 1512; Title 18 U.S.C.A. § 2071; and, Title 18 U.S.C.A. § 1341.

IV. AFFIDAVIT OF INFORMANT: An Affidavit was submitted to the Court of Appeals on April 15, 2001, which contained information given to the Petitioners by an informant in Geneva, Switzerland in March, 2001, detailing the international money laundering activities of The American Express Company, Inc., et al. The money laundering activities are a fraud pursuant to Title 18 U.S.C.A. § 1956, and there is no statute of limitation for these patterns of activities. Petitioners requested a new trial, or a remand to the lower court with a new judge based, upon this newly discovered evidence. (See App. 30)

◊

## REASONS FOR GRANTING CERTIORARI

**The decision below raises significant and recurring problems concerning the enforcement and execution of the Acts of Congress by the Judicial and Executive branches, and the denial of specific constitutional rights by the lower courts to the Petitioners.**

Violations of the RICO statutes are the basis of the Petitioners' complaint, not contract law. The Petitioners state that the injuries that they have suffered in these proceedings as a result of the actions of the Respondents, the lower courts and the Attorney General of the United States are concrete, particularized, actual or imminent invasions of the legally and constitutionally protected rights of due process of law under Amendment V and XIV, equal protection of the laws under Amendment XIV, and trial by jury under Amendment VII. By denying these rights the lower courts have failed to protect the right of these Citizens to a speedy trial, and these severely irreparable constitutional, legal, and personal injuries are not hypothetical or conjectural, but are the result of the severe damages and harm that has been inflicted upon the Petitioners by a conspiracy through "fraud upon the Court."

The casual connection between the injury or conduct complained of is "fairly . . .trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] some third party not before the court." *Simon v. Eastern Ky. Welfare Rights Organization,* 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). All overt acts which have brought this petition have been perpetrated by the Respondents and the officers of the courts in the proceedings below, and extrajudicial sources have affected the opinions.

Because the Petitioners' pleadings are factual, concise, and well researched with supporting evidence and affidavits, it is highly likely that the Petitioners' injuries will be redressed by a favorable decision for them in a jury trial. Constitutional rights have been invaded, multiple Federal statutes have been violated, but the records of the courts, and future discovery, will attest to the veracity and accuracy of the Petitioners' claims.

I. DISTRICT COURT: This petition is dependent on the type of issues involved, the way in which they were decided below, the status of the law on the matters and the correctness of the decisions below. Although the Court stated in *United States v. Grinnell Corp.*, 384 U.S. 563, as cited in *Liteky v. U. S.*, 510 U.S. 540, that "judicial rulings alone almost never constitute a valid basis for a bias or partiality recusal motion," the District Court in this case did specifically point to a judicial predisposition that is wrongful or inappropriate because the courts' rulings and actions constituted a denial of the due process of the law and equal protection of the laws, and finally a denial of trial by jury, to wit:

1) The Respondents submitted a motion for a continuance on November 22, 1999, and said motion had an exhibit attached of a ruling issued in September, 1999, by The Hon. Colleen Kollar-Kotelly, against another RICO litigant (a medical doctor) who had filed as a *pro se*. (*See* App. 39). Respondents insinuated in that motion that if the Petitioners did not withdraw their RICO complaint that Judge Kollar-Kotelly, who was already obviously biased and prejudiced against the "*pro se* class," would rule this case against the Petitioners accordingly – and she did just that.

The action of the Respondents to threaten the Petitioners with an exhibit which displayed an elitist and exclusionary bias and prejudice against a *certain* class, and the court's support of this display of bias and prejudice by the Respondents is a denial of equal protection of the laws pursuant to Amendment XIV. The very essence of this rule's intent is the denial of the due process and equal protection of the laws clauses against the Petitioners as a "class" in violation of Amendments V and XIV.

The Petitioners were designated as a "class" through the court's Local Rule 40.5 which had them assigned to the same judge not as any other litigant would be assigned to the same judge through rotation, but because of their "class" distinction which also labeled them as either prisoners or indigents of which neither Petitioner is a member. Local Rule 40.5 attaints the litigant with a bias and prejudice and is unconstitutional on its face and upon its effect.[1] The Petitioners formally challenged the constitutionality of Local Rule 40.5 in a motion filed for a Constitutional Question pursuant to Rule 44 Federal Rules of Appellate Procedure and Title 28 U.S.C.A. § 2403.

> "To make that provision applicable it is enough that a question as to the constitutionality of an Act of Congress is involved, however it may arise. The question may be raised by any party and the section is

---

[1] The provisions in the United States Constitution by which the United States guarantees to every state a republican form of government and prohibits the state from passing a bill of attainder or depriving one of life, liberty, or property without due process of law, must be construed in connection with other parts of the Constitution and in the light of the surrounding circumstances. *Minor v. Happerstett,* 88 U.S. 162, 21 Wall. 162, 22 l.Ed. 627, (1874).

any party and the section is not limited to *cases where an injunction is sought to restrain* the enforcement of the Act."[2]

There is a conflict that is substantial in character between the decisions of the Court of Appeals and that of the decisions of the Supreme Court upon this issue, and, therefore, the jurisdiction of this Court for this petition is valid.

2) The Hon. Colleen Kollar-Kotelly issued an Order on March 14, 2000, (App. 25) which stated that the Petitioners had filed another case on February 9, 2000,[3] before filing a motion on March 10, 2000, for a continuance to appear for a settlement conference before Magistrate John M. Facciola on April 6, 2000.

The inappropriate predisposition stated or implied in the order was that the Petitioners had written and filed a new case while failing to answer court papers filed in the American Express case, and then asked for a continuance for health reasons because they could not meet all of the required filing obligations in the American

---

[2] *International Ladies' Garment Workers' Union et al v. Donnelly Garment Co. et al,* 304 U.S. 243, 249.

[3] *Samuel K. Jacobs, et al, v. Susan Wu, et al,* Case Number 1:00CV231. This was not a new complaint, but a revised complaint of a case which had been previously submitted to the United States District Court for the Southern Division of Maryland, and withdrawn so that it could be filed in the District of Columbia to correct jurisdiction and venue issues. The complaint was filed on alleged acts of treason by Chinese agents upon the testimony of two witnesses pursuant to Article III, Section 3, "aiding and abetting."

Express complaint. The Respondents in *The American Express Company, Inc., et al,* had requested their second continuance on December 16, 2000, and during that time Petitioner Heckerman revised the complaint for *Susan Wu, et al,* while Petitioner Jacobs recuperated from pneumonia and congestive heart failure that he suffered in late December, 1999, and early January, 2000. There was no subterfuge on the part of the Petitioners to avoid answering any court papers from the Respondent *American Express Company, Inc., et al,* as implied by the court's biased order.

3) The Petitioners filed a timely motion and affidavit on May 5, 2000, requesting that Judge Colleen Kollar-Kotelly recuse herself pursuant to Title 28 U.S.C.A. § 144, § 372, and § 455 from both cases because of the conspiracy which had been formed with her Order of March 14, 2000. When Title 28 U.S.C.A. § 455[4] was amended in 1974 the House Judicial Committee Report stated:

---

[4] "On the other hand, to establish the extrajudicial source of bias and prejudice would often be difficult or impossible and this is not required. Comments and rulings by a judge during the trial of a case may well be relevant to the question of the existence of prejudice. Conceivably also, and we shall assume this in petitioners' favor, as was done in Rosen v. Sugarman [2 Cir., 357 F.2d 794] *supra*, contacts during a trial might themselves have created such a degree of irritation with a party or his lawyer as to create the bent of mind to which the Supreme Court of the United States Court referred in *Berger. Wolfson v. Palmieri*, 396 F.2d 121, 124 (2nd Cir. 1968).

"It is the view of your Committee that this approach is sound. The general rule should be that a judge is disqualified in all circumstances in which his "impartiality might reasonably be questioned" and that a waiver (or remittal) should be permitted only in specially defined circumstances and under specified controls." P.L. 93-512, concerning the amendments to Title 28 U.S.C.A. § 455 in 1974, Page 6361.

The Hon. Colleen Kollar-Kotelly issued an Order on June 14, 2000, that she would not recuse herself, and, thus prevented, hindered, and delayed the enforcement and the execution of Title 28 U.S.C. § 144, § 372, and § 455. The preeminent precedent for judicial recusal pursuant to § 144 is *Berger v. United States*, 255 U.S. 22:

> There is no ambiguity in the declaration and seemingly nothing upon which construction can be exerted—nothing to qualify or temper its words or effect. It is clear in its permission and direction. It permits an affidavit of personal bias or prejudice to be filed and upon its filing, if it be accompanied by certificate of counsel, directs an immediate cessation of action by the judge whose bias or prejudice is averred, and in his stead, the designation of another judge. At pages 32-33.

By not enforcing these statutes the lower courts have interpreted these statutes as unconstitutional, or have adopted measures for the Judicial branch which are not protected by the Constitution, and are inconsistent with this

Court.

4) The Order issued on March 14, 2000, also stated: *"However, fourteen days later, Petitioners filed a new lawsuit with a Complaint numbering 129 pages with 25 attached exhibits."* The attorneys for the Respondents immediately followed this instruction and researched the date of the other case mentioned in the order and conferred with the attorneys and the defendants in *Susan Wu, et al,* thus completing the formation of a criminal conspiracy in violation of Title 18 U.S.C.A. § 242 under color of the law.[5]

Through that conspiracy the Respondents have submitted court documents with the fax number of the parties in *Susan Wu, et al,* and submitted a "bill" for the debt of Susan Wu through her alias, Gung Sou Wu, at the settlement conference before Magistrate Facciola on April 19, 2000.[6] The outside fraudulent information submitted to the District Court by the *Susan Wu, et al,* defendants through these Respondents was an "extrajudicial source" which discriminatorily contributed to the bias and prejudice of the judge. Petitioners deny any responsibility for the credit cards charges of Susan Wu, et al, or any other outside parties. The only way that Susan Wu's alias could have been known to these Respondents is through information gathered from the conspiracy created by Order of the Court.

---

[5] The word "conspire" has some connotation of criminality, but in section 241 of this title providing that if two or more persons conspire to injure any citizen in the free exercise of any right secured to him by the Constitution or laws of the United States they shall suffer certain punishment, "conspire" does not have the force or effect of "willfully" as used in this section denouncing the deprivation of rights. *Williams v. U.S.,* C.A.Fla.1950, 179 F.2d 644, affirmed 71 S.Ct. 581, 341 U.S. 70, 95 L.Ed. 758.

[6] This "bill" was missing in the "trick" Order of October 12, 2000, so that the amount in question was less than $75,000; therefore, the Respondents' counterclaims could not qualify for the amount of damages for the U. S. District Court and further RICO challenges from the Petitioners.

Petitioners request instructions from this Honorable Court as to how to untangle this web since *Susan Wu, et al,* is a complaint on alleged treason against the United States, and The American Express Company, Inc., has financially aided and abetted the activities and objectives of the defendants in that case. In treason there no accessories—only principals.[7]

5) The Hon. Colleen Kollar-Kotelly issued an Order on October 12, 2000, (App. 3) which dismissed the Federal issues of the complaint by remanding the Respondents' counterclaims to the D.C. Superior Court as "state law" violations. The District Court dismissed the Petitioners' allegations that the Respondents have created a genuine pattern of racketeering activities as evidenced by the nineteen other RICO or Consumer Protection Act related complaints against The American

---

[7] In treason there are no accessories; all who engage in rebellion at any stage of its existence, or who designedly give to it any species of aid and comfort, in whatever part of the country they may be, are principals in the commission of the crime. *U.S. v. GREATHOUSE,* et al. 26 Fed. Cas.No. 15,254; 4 Sawy. 457; 2 Abb. U.S. 364; Circuit Court, N. D. California. Oct. 17, 1863.

Express Company, or its subsidiaries which were cited in the Petitioners' Complaint. The Order stated: *"Plaintiffs' laundry list of prior lawsuit involving American Express does not establish that Defendants have engaged in a pattern of a racketeering activity."* Petitioners have satisfied the *continuity plus relationship* factor with the facts, affidavits, and exhibits in this case in relationship to the previous precedents against The American Express Company as defined in *H.J. Inc. v. Northwestern Bell Tel. Co.,* 429 U.S. 229, and the District Court's ruling is in direct conflict with the decision cited.

Most importantly, The Hon. Judge Kollar-Kotelly denied the Petitioners their demanded right of a trial by jury in violation of Amendment VII, and Rule 38 of the Federal Rules of Civil Procedure.[8]

> "The right of trial by jury is of ancient origin, characterized by Blackstone as "the glory of the English law" and "the most transcendent privilege which any subject can enjoy" (Bk. 3, p. 379) ; and, as Justice Story said (2 Story on the Constitution, § 1779), ". . .the Constitution would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms." With, perhaps, some exceptions, trial by jury

---

[8] The right to jury trial is a great constitutional right, of which a party may be deprived only in exceptional cases and for specified causes. *Town of Grand Chute v. Winegar,* 82 U.S. 373, 15 Wall. 373, 21 L.Ed. 174.

has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law as well as in criminal cases. Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U.S. 474, 485-486.

Petitioners did not file for a change of judge because they feared an adverse opinion. On the contrary, the Petitioners demanded a trial by jury before a new judge because they were, and still are confident that they will prevail.

But here, we are dealing with a constitutional provision which has in effect adopted the rules of the common law, in respect of trial by jury, as these rules existed in 1791. To effectuate any change in these rules is not to deal with the common law, *qua* common law, but to alter the Constitution. The distinction is fundamental, and has been clearly pointed out by Judge Cooley in 1 Const. Limitation, 8th ed., 124. *Id.*, 487.

6) In the Order of October 12, 2000, Judge Kollar-Kotelly stated that on Page 7 of the Memorandum that *"In this case, Plaintiffs have not stated that they wish to engage in discovery prior to the Court's consideration of Defendants' motion."* On page 21 of the transcript for the Initial Scheduling Conference held on July 6, 2000, Petitioner Heckerman stated: *"Since the defendants*

*have filed an answer, can we proceed with Rule 26 discovery?"* Pre-trial discovery usually favors the plaintiff, and is usually required to determine the merit before the status conference, but because of the Court's bias and prejudice against the Petitioners the request was "deferred" until after a October 16 status conference.

7) In the Order of October 12, 2000, the District Court states that the Respondents' request be granted in their motion for summary judgment. In the very next part of the Order she denies the Respondents' request for dismissal pursuant to Rule 12(b)(6) "failure to state a claim upon which relief can be granted." [9]The Order says the Respondents are right in the first part, but the Petitioners are also right because they have NOT *"failed to state a claim"* pursuant to Rule 12(b)(6). These decisions also conflict with the Memorandum.

8) The Order of October 12, 2000, states at the end "*that this is a final appealable order,*" yet it included a remand to the District of Columbia Superior Court which is *not* an appealable order, and the Order eliminates Federal jurisdiction.

II. COURT OF APPEALS: The Court of Appeals Order of March 15, 2001, (App. 1), dismissed the appeal stating that the Petitioners *"had failed to appeal from the district court's order granting summary judgment."* The Petitioners never received a copy of the final Order from the Court by U.S. Mail issued on October 12, 2000.[10] Petitioners never received a copy of this Order by U.S. Mail or by fax as the Judge promised in Court on July 6, 2000. The District Court issued orders so totally devoid of evidentiary support as to render the ruling unconstitutional under the Due Process Clause of Amendment XIV.

---

[9] *"ORDERED that, to the extent that it requests summary judgment, Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment [#39] is GRANTED, it is further*

*"ORDERED that, to the extent that it requests dismissal under Rule 12(b)(6), Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment [#39] is DENIED, . ."*

The Petitioners did not file the appeal upon the final Order since they could not have received it, but upon interlocutory orders pursuant to FRAP Rule 4(a) and FRCvP Rule 60(b) which were void due to the refusal of the judge to recuse herself which is a "fraud upon the court."[11] The opinion of the Court of Appeals stated that *"this court lacks jurisdiction to consider an appeal only from the interlocutory orders noted."* However, the Court of Appeals merged all the "*orders designated in the notice of appeal into the district court's final order granting summary judgment.*" The summary judgment under Rule 56(c) is "interlocutory in character," and because of the contradictions in the Order and Memorandum, it is an open order and, therefore, it is also a nullity. The Respondents challenged the appeal with a motion to dismiss on November 29, 2000, pursuant to Title 28 U.S.C.A. § 1291,[12] but the Court disregarded Petitioners' response of December 21, 2000, pursuant to the "collateral order doctrine" [13] for which ALL of the following requirements for the appeal were met:

---

[10] Normally, filing of timely and sufficient notice of appeal immediately transfers jurisdiction as to any matters involved in appeal from district court to court of appeals; once proper appeal is taken, district court may generally take action only in aid of appeal or to correct clerical errors. *Leonhard v. U.S.*, C.A.N.Y.1980, 633 F.2d 599, certiorari denied 101 S.Ct. 1975, 451 U.S. 908, 68 L.Ed.2d 295.

[11] Fraud upon a court is a matter which is so grave that rules permit relief from final judgment to be afforded without regard to any time limitation. *Great Coastal Express, Inc. v. International Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of America,* D.C.Va.1980, 86 F.R.D. 131.

Judgment may be set aside only where fraud is extrinsic or collateral to the matters involved in the action; in order to be considered extrinsic fraud, alleged fraud must be it prevents party from having opportunity to present his claim or defense in court or deprives party of his right to a day in court. *Green v. Ancora-Citronelle Corp.*, C.A.CaL 1973, 577 F.2d 1380.

---

[12] By admonishing that the collateral order doctrine constitutes a narrow exception to the requirement that all appeals await final judgment, the United States Supreme Court required that an appealable collateral order be effectively unreviewable on appeal from a final judgment. *In re Underwriters at Lloyd's,* C.A. 4 (Md.) 1981, 666 F.2d 55.

[13] Although 28 U.S.C.A. § 1291 vests Courts of Appeals with jurisdiction appeals only from "final decisions district Courts, a decision "final" within meaning of statute does not necessarily mean last order possible to be made in the case; thus, decision of district is appealable if it falls within that small class which finally determines claims of right separate from, and collateral to, rights asserted in action, too important to be denied review and too independent of cause itself to require that appellate consideration be deferred until whole case is adjudicated. *Mitchell v. Forsyth,* Pa. 1985, 105 S.Ct. 2806, 472 U.S. 511, 86 LEd.2d 411, on remand 772 F.2d 894. See, also, *Swift & Co. Packers v. Compania Colombiana Del Caribe,* Canal Zone 1950, 70 S.Ct. 861, 339 U.S. 684, 94 L.Ed. 1206.

> Four requisites of appealability under collateral order exception to rule that appeals can be taken from only final decisions of district courts are that the order involve (1) an issue essentially unrelated to merits of main dispute, capable of review without disrupting the main trial, (2) a complete resolution of the issue, not one that is "unfinished" or "inconclusive", (3) a right incapable of vindication on appeal from final judgment; and (4) an important and unsettled question of controlling law, not merely a question of proper exercise of trial court's discretion. *U.S. v. Sorren*, C.A. 1 (Puerto Rico) 1979, 605 F.2d 1211.

The decisions of the Court of Appeals to support the lower court rulings involving the erroneous construction and application of federal statutes in not just one law, but in multiple laws, and their support of the violations of the Constitution and other statutes by the lower court is of grave importance, and should be reviewed by this Court's supervisory power because the questions asked are significantly important. The conspiracy to deny these constitutional rights is the injury in fact of direct and actual causes in these judicial proceedings, and they are not 'speculative' or 'hypothetical.'

III. THE ATTORNEY GENERAL: The Hon. John Ashcroft has failed to *"take Care that the Laws be faithfully executed,. . ."* thus violating Article II, Section 2, and has failed in his Oath to the American people. Attorney General Ashcroft and Executive Officer Gwendolyn L. Turner knew that it was a violation of the criminal statutes to return the Petitioners' papers to them by the U.S. Mail on May 15, 2001. (*See* App.27) The Hon. John Ashcroft is the Attorney General of the United States and it is his "official function" and primary duty of his office to know and execute the Federal laws. " The words "official function," as used in § 5451, mean a duty imposed by law, and a charge of crime cannot be predicated upon an act not made an official function, obligation or duty by express command of law." *Haas v. Henkel,* 216 U.S. 462, 468. [14]

> Regulations to have the force of law must be made by an executive department in pursuance of authority delegated by Congress and only when so promulgated, will the courts take judicial notice of their existence. The existence of such rule is a fact and must be pleaded and proven as any other fact.[15]

The lower courts and the Attorney General have willfully and unlawfully defrauded the United States by impairing, obstructing and defeating a lawful function of any department of its Government through their actions to fail to enforce or execute the enactments of Congress in violation of Title 18 U.S.C.A. § 371. In *Hammerschmidt v. U.S.,* 265 U.S. 182, 183, the Court concluded: "The conduct of petitioners constituted a conspiracy to defraud the United States in that the intention and necessary effect of their agreement and acts was to obstruct and defeat the purpose of a measure enacted by Congress for the preservation of the Government." The Attorney General has violated his Oath, and as the Court further stated in *Haas v. Henkel,* 216 U.S. 462: "The opinion was delivered by Mr. Justice Lurton and the words relied on are: "The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government." " To deny the Petitioners' constitutional and legal rights is to deny them the same immunities and privileges of all other Citizens of the several States in violation of Article IV, Section 2, and this a *public* denial more than a *private* right, for to deny one Citizen is to deny all.

---

[14] § 5451 is now Title 18 U.S.C.A. § 371.

[15] *United States v. Matthews,* 146 Fed. Rep. 306; *Haas v. Henkel,* 216 U.S. 462, 467

IV. AFFIDAVIT OF INFORMANT: "Certain parties" recently visited the Petitioners' informant at his home in Spain and threatened that he would not receive a visa to come to the United States to testify or give a deposition for this case, or to go back to Venezuela. These acts are an obstruction of justice by tampering with a witness pursuant to Title 18 U.S.C.A. § 1506 and § 1512. The activities of the family are constantly being monitored for their own protection at the expense of the Petitioners. The name and address will be submitted only after the Petitioners are assured that the authorities will protect this witness and he can come to the United States to testify.

The Affidavit has never been mentioned by the officers aforementioned and the Respondents to never filed a response pursuant to Rule 27(a)(3) of the Federal Rules of Appellate Procedure, and pursuant to Rule 8 (d) of the Federal Rules of Civil Procedure the Affidavit contains averments which have been "*admitted when not denied in the responsive pleading.*"

## SEDITIOUS CONSPIRACY

The American Express Company, Inc., et al, have a force of numbers totaling 88,378 people.[16] The District Court judge, the Court of Appeals and the Attorney General have joined the numbers[17] of the Respondents through the "*force*" of orders, mandates, and authority of office[18] to violate the aforementioned laws, and these actions are a violation of Title 18 U.S.C.A. § 2384 which was originally enacted as 1 Stat. 112, on April 30, 1790. Just as the trial by jury statute can never be changed, Title 18 U.S.C.A. § 2384 can never be changed by order of the First Congress. Only in July, 1861 was the punishment, but not the Act, redefined.

---

[16] Article, Northwest Airlines World Traveler, March 2001, "*Power under Pressure,*" page 40.

[17] If a body of men be actually assembled in force, in a condition to make war, in order to overturn the government any one place by force, this is levying war. It is not necessary that the assemblage should be with military arms and array; numbers alone may supply the requisite force. *Charge To The Grand Jury-Treason,* 30 Fed. Case No. 18,274.

[18] If a man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law judges of the intent by fact. *Case of Fries,* 9 Fed. Case No. 5,127.

> Mr. Hamilton, then secretary of the treasury, in his report to the president, upon the insurrection, says of the resolutions of this meeting: "The idea of pursuing legal measures to obstruct the operation of a law needs little comment. Legal measures may be pursued to procure the repeal of a law, but to obstruct its operation presents a contradiction in terms. The operation, or, what is the same thing, the execution of a law, cannot be obstructed, after it has been constitutionally enacted, without illegality and crime. *U.S. v. Insurgents,* 26 F.Cas.No. 499, 502.

This "banding together" to prevent, hinder, and delay the execution of the laws is the domestic form of "levying of War," and it envelopes both direct and constructive treason in violation of Article III, Section 3.[19] In the *Charge To The Grand Jury-Treason.* 30 Fed. Case No. 18,274, this term was defined:

> A purpose to prevent, by force, the execution of any public law of the United States,

---

[19] Levying war is *direct* where the war is levied directly against the government with intent to overthrow it; *constructive*, where it is levied for the purpose of producing changes of a public and general nature by an armed force. Foster, 211, Blackstone's Commentaries.

Warlike array is not necessary. It is only a circumstance. *1 East's Cr. Law, 66.* According to the English books, a *direct* levying of war, is a war directly against the person of the king. A *constructive* levying of war, is war against the government. *Ex Parte Bollman and Swartwout,* 4 U.S. 75.

[19] *Case of Fries,* 9 Fed. Case 5,126, page 913.

> generally and in all cases, is a treasonable purpose, for it is entirely to overthrow the government as to one of its laws; and, if there be an assemblage of men for the purpose of carrying this purpose into effect by force, this will constitute a levying of war.

Petitioners heavily rely upon the *Case of Fries*, 9 Fed. Cas. No. 5,126 and 5,127. From 1790 to 1919 this incredible case was authoritative in the definition of "levying of War" which was one of the seven statutes enacted for treason by King Edward III in 1352. The only other statute which was included in Article III, Section 3 of the Constitution was "aiding and abetting" the enemy. The case involved treason, double jeopardy, judicial impeachment, insurrection, extent of executive authority, constitutional interpretations, and a criminal defendant without counsel. The country almost dissolved over this one insurrection in western Pennsylvania, and one of their leaders, John Fries, was brought to trial. The Congress convened and decided that the insurgents could not persevere through any "force" to prevent the execution of the laws. The hard fought Revolution would be for naught and the country would be lost if a change in the laws could not be obtained through Congress as the Constitution instructed. As Judge Iredell stated so succinctly in the *Case of Fries*:

> In monarchical governments it will sometimes happen that a rebellion breaks out in an endeavour to destroy one monarch and set another on the throne: in such a case the

> treason plainly and unequivocally displays itself, and there can be no doubt about it; but this cannot occur in a republican form of government: men are seldom found who will be guilty of such open treason, as to come forward, in the face of day and declare their design to destroy the constitution or all the laws. No, if men of sense go to promote insurrection, whether they mean to destroy the government or not, they must be wicked; they go about their design by more insidious means; art will be used, and pains taken to promote a dislike of a certain law; this evil prejudice is encouraged until it becomes general among the people, and they become as ripe for insurrection as the present case. Nor would the evil cease with the destruction of one law: they may declare they mean to stop at that one act, but having destroyed it, and finding their power above that of the government, is it not to be apprehended that they would destroy another and another, and so on to any number they disapprove of? [20]

The violations of the laws by the aforementioned parties are all actions to "levy War" upon the United States for they have prevented, hindered, and delayed by *"force"* the execution and enforcement of the Acts of Congress in violation of Article III, Section 3, upon which Title 18 U.S.C.A. § 2384 is founded. This law is not radical, nor are these Citizens it protects. This law was enacted to protect the country from the seditious acts such as those cited in this Petition, and the supervisory power of this Court is needed to remind all Officers of their primary duties.

---

[20] *Case of Fries,* 9 Fed. Case 5,126, page 913.

## CONCLUSION

This case is about three main issues. 1) It is about the denial of the Petitioners' constitutional rights to due process of the law pursuant to Amendment V and XIV, equal protection of the laws pursuant to Amendment XIV, and trial by jury pursuant to Amendment VII. 2) It is about the refusal of a judge to recuse herself after creating a criminal conspiracy within the District Court. 3) And, it is about the actions taken by the District Court, the Court of Appeals, and the Attorney General of the United States to prevent, hinder, and delay the execution of the enactments of Congress in order to deny the Petitioners their constitutional, legal, and personal rights. The denials of the Constitutional rights by the lower courts have halted the proceedings, but not the cause. Your Petitioners respectfully request that a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals of the District of Columbia.

Respectfully submitted,

Samuel K. Jacobs, and,
Nancy Heckerman
1155 Connecticut Avenue
Suite 300
Washington, D.C. 20036
(202) 429-6545

# APPENDIX

## TABLE OF CONTENTS—APPENDIX

Page

COURT OF APPEALS, DIST. OF COL.,
MARCH 15, 2001 ORDER................................1
DISTRICT COURT, DIST. OF COL.
OCTOBER 12 ,2000, ORDER............................3
DISTRICT COURT, DIST. OF COL.
OCTOBER 12 ,2000, MEMORANDUM...............5
DISTRICT COURT, DIST. OF COL.
MARCH 14, 2000, ORDER .............................25
LETTER FROM ATTORNEY GENERAL
MAY 15, 2001.................................................27
COURT OF APPEALS, DIST. OF COL.,
MAY 17, 2001 ORDER....................................28
AFFIDAVIT ....................................................30
RESPONDENTS' LETTER, NOV. 22, 1999.........39
WALLACE MEMORANDUM,
SEPTEMBER 13, 1999....................................45
CONSTITUTIONAL PROVISIONS......................60
STATUTORY PROVISIONS
  TITLE 15 U.S.C.A. ......................................61
  TITLE 18 U.S.C.A. ......................................71
  TITLE 28 U.S.C.A.........................................91
FEDERAL RULES..............................................95

## UNITED STATES COURT OF APPEALS
## FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 00-7254** **September Term, 2000**

99cv2809

Filed on: (Stamp)
UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAR 15 2001
CLERK

Samuel Jacobs and Nancy Heckerman
Appellants

v.

American Express Company, et al,
Appellees

**BEFORE:** Williams, Randolph, and Garland, Circuit Judges

## ORDER

Upon consideration of the motion to extend time to file a response to the motion to dismiss, the response thereto, and the reply; the motion to supplement the reply in support of the motion to extend time and the lodged supplement; and the motion to dismiss, the lodged response thereto, and the lodged reply, it is

**ORDERED** that the motion to supplement the reply in support of the motion to extend time be granted. The Clerk is directed to file the lodged supplement. it is

**FURTHER ORDERED** that the motion to extend time to file a response to the motion to dismiss be granted. The Clerk is directed to file the lodged response and the lodged reply. It is

**FURTHER ORDERED** that the motion to dismiss be granted. Appellants have not noted an appeal from the district court's final order granting summary judgment. Because all the orders designated in the notice of appeal have merged into the final order, see Hartman v. Duffev, 19 F.3d 1459,1466 (D.C. Cir. 1994), this court lacks jurisdiction to consider an appeal only from the interlocutory orders noted. Cf. United States v. Garde, 848 F.2d 1307, 1309 (D.C. Cir. 1988) (per curiam) (if there is no relief that could be granted by the court, the appeal must be dismissed as moot).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**
(INITIALS FOR JUDGES):
Stephen F. WILLIAMS, A. Raymond RANDOLPH, AND Merrick B. GARLAND

◊

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

---

SAMUEL K. JACOBS and
NANCY M. HECKERMAN,

Plaintiffs,

Civil Action
No. 99-2809
(CKK/JMF)

v.

AMERICAN EXPRESS CO., INC.,
*et all*,

Defendants

(Stamp)
FILED
OCTOBER 12, 2000
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

---

## ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is, this 12 of October, 2000, hereby

**ORDERED** that, to the extent that it requests summary judgment, Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment [#39] is GRANTED; it is further

**ORDERED** that, to the extent that it requests dismissal under Rule 12(b)(6), Defendants' Motion to Dismiss or, in the Alternative, for Summary

Judgment [#39] is DENIED; it is further

**ORDERED** that Defendants' request for attorneys' fees and costs pursuant to 28 U.S.C. § 1927 is DENIED; it is further

**ORDERED** that Defendants's counterclaims [#30] are REMANDED to District of Columbia Superior Court; it is it is further

**ORDERED** that Plaintiffs' Amended Complaint (#21] is DISMISSED and that this is a final, appealable Order.

**SO ORDERED**.

s/Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

Copies to:

Samuel K. Jacobs
Nancy M. Heckerman
1050 17th Street, NW
Suite 600
Washington. DC 20036

Hamilton Loeb
Carol A. Kelley
Paul. Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004-2400

◊

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

---

SAMUEL K. JACOBS and NANCY M. HECKERMAN,

Plaintiffs.

Civil Action No. 99-2809 (CKK/JMF)

v.

AMERICAN EXPRESS CO.. INC., *et al*,,

Defendants.

---

(Stamp)
FILED
OCT 1 2, 2000
NANCY MAYER WHITTINGTON, CLERK
U.S DISTRICT COURT

## MEMORANDUM OPINION

*Pro se* plaintiffs Samuel K. Jacobs ("Jacobs") and Nancy M. Heckerman ("Heckerman") (collectively, "Plaintiffs"), professional colleagues and cardholders on a single American Express Platinum Corporate Card account, had difficulty using that corporate card to pay for jewelry, accommodations, and airline tickets while traveling on business in Bangalore, India. Those difficulties eventually led to this lawsuit, in which Plaintiffs assert, *inter alia,* that American Express. Co. Inc.. along with several of its affiliates, officers, employees, and attorneys.[1] violated the Racketeer Influenced and Corrupt Organizations Act. 18 U.S.C. § 1961 *et seq*. ("RICO"). Defendants have answered Plaintiffs' Amended Complaint and filed counterclaims of their own.

Before the Court is Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, wherein Defendants argue that (1) under the agreement that governs Platinum Corporate Cards, American Express may deny authorization for any requested charge, and (2) Plaintiffs have failed to demonstrate a pattern of racketeering activity, as required under RICO.[2] After considering Defendants' motion, Plaintiffs' opposition, and Defendants' reply, as well as exhibits submitted by both parties. the Court concludes that Defendants are entitled to summary' judgment in regard to Plaintiffs' Amended Complaint. [3] In their motion,

---

[1] For convenience, the Court refers to American Express Co. Inc. and its affiliated organizations as "American Express." The Court refers to all at' the corporate and individual defendants collectively as "Defendants."

[2] Because the Court has considered affidavits and exhibits in reaching its decision, it treats Defendants' motion as a request for summary judgment under Rule *56* of the Federal Rules of Civil Procedure, not as motion to dismiss under Rule 12(b)(6).

[3] Plaintiffs' Amended Complaint, which spans 118 pages and *305* paragraphs, is a difficult document to digest. Nonetheless, it appears to consist of two sorts of claims. First, Plaintiffs make allegations stemming from Defendants' refusal to authorize some purchases in India. Second, relying in part on the first type of claim, they assert that the Defendants have violated RICO.

Defendants also ask the Court for an award attorneys' fees and costs. Because the Court determines that Plaintiffs have not clearly acted in bad faith, it declines to impose any such sanctions.

Having disposed of Plaintiffs' federal claims, the Court declines to exercise supplemental jurisdiction over Defendants' three counterclaims. Accordingly, the Court shall remand each of them to District of Columbia Superior Court.

## I. BACKGROUND

According to Plaintiffs, in January 1999, American Express approved an American Express Corporate Card account for Main Street Computers Computer Systems, Inc. a Rockville, MD. corporation, and issued cards to Plaintiffs and other senior-level employees. *See* Am. Compl. ¶ 29: Mem. of P. & A. in Supp. of Defs.' Mot. to Dismiss or, in the Alternative, for Summ. J. (hereinafter Defs.' Mem."] Ex. 4 (summary of account listing the employees authorized to use the Platinum Corporate Cards). The cards were upgraded to Platinum Corporate status in March

---

In their motion, Defendants divide Plaintiffs' claims into these two categories. *See* Mem. Of P. & A. in Supp. of Defs.' Mot. to Dismiss or, in the Alternative, for Summ. J. at 1-2. To the extent that Plaintiffs' opposition is responsive to the motion. Plaintiffs apparently accept this approach as well. *See* Mem. of' P. & A. in Supp. of Pls.' Mot. to Deny Defs.' Mot. to Dismiss or. in the Alternative, for Summ. J. ¶ ¶ 1-10. Considering that the parties accept this two-category approach, and because it is a reasonable understanding of the perplexing amended complaint, the Court that view as well.

1999. *See* Am. Compl. ¶ 34. Plaintiffs assert that American Express issued the cards "pursuant to their advertising and solicitations that the card had *'no preset spending limit.'* " *Id.* ¶ 29 (emphasis in original). Under the agreement that governs the relationship between American Express and Corporate Platinum Cardholders, however. American Express "reserve[s] the right to deny authorization for any requested Charge." Defs.' Mem. Ex. 5 ¶ 9.

Plaintiffs describe two separate incidents in which they allegedly experienced problems with their corporate cards. First Plaintiffs allege that, in April 1999. Heckerman used her Platinum Corporate Card to purchase office equipment under a small business "Equipment Financing" program offered by American Express. See Am. Compl. ¶~ 4 1-42: Defs.' Mem. Ex4. According to Plaintiffs, Heckerman promptly returned one of the items she had purchased under the program, but American Express nonetheless billed the Platinum Corporate Card account for finance charges on that item. *See* Am. Compl. ¶¶44-47.

The second alleged incident involved denials of authorizations for purchases in India. Plaintiffs contend that Heckerman contacted an American Express representative in early June1999 to discuss Plaintiffs' upcoming business trip to India. *See id* ¶ 48. They assert that Heckerman informed the representative that Plaintiffs would likely use their Platinum Corporate Card. as well as Jacob's personal Gold American Express Card, to make purchases of at least $20.000, including purchases of jewelry. *See Id.* ¶¶*1 49-52.* According to Plaintiffs, the representative informed Heckerman that Plaintiffs would be authorized to use the cards for those expected purchases. *See Id* ¶ *52.* Defendants contend that they have no records of any such communications between Plaintiffs and American Express. *See* Defs.' Mem. at 22-23 n. 14.

Plaintiffs claim that on June 14, 1999, while in Bangalore, India. they tried to use the Platinum Corporate Card to purchase jewelry for S27,000, but that American Express denied authorization. *See* Am. Compl. ¶ 61. After communicating with American Express representatives in India and the United States several times over the following three days, Plaintiffs believed that American Express had decided to authorize "$27,000 for any purchases. and a limit for $5,000 for travel expenses." *Id.* ¶¶ 62-73. According to Plaintiffs, they returned to the jewelry vendor and successfully used the Platinum Corporate Card to purchase a reduced quantity of jewelry for SI 6.425. *See* Id. ¶ *75.* After making that purchase, however, they claim that they tried to use the card to purchase other goods from another vendor for $7,000, but that authorization was denied. *See Id.* ¶76. They further assert that they were unable to use the Platinum Corporate Card to pay their entire hotel bill or to purchase airline tickets on June 18. 1999. *See Id.* ¶¶ 80-83. As a result, they claim they were obliged to rely on the generosity of their Indian business associates to settle their accounts. *See Id* ¶ 85.

Plaintiffs claim that the denials of authorization embarrassed them in front of business associates, delayed an important business trip to Bombay, and forced them to cancel a layover in Germany during which Heckerman had planned to undergo cancer treatment. *See Id* ¶ 79-80. They further contend that the denials effectively stranded them in a potential war zone and eventually cost them $20 million in lost contracts. See *Id.* ¶¶ 84, 99-100.

On October 25, 1999. Plaintiffs initiated this lawsuit by filing a complaint entitled "Complaint Under The Racketeering Influenced and Corrupt Organizations Act." *See* Compl. On April 10, 2000. after a protracted and ultimately unsuccessful effort to reach a settlement, Plaintiffs filed an Amended Complaint in which they added American Express' counsel as defendants in the suit. *See* Am. Compl. ¶ 2(N)-(O); 3(p)-(r). The amended complaint, like the complaint before it. describes the equipment financing dispute and the jewelry purchase dispute as elements of a vast conspiracy orchestrated by American Express to defraud customers, violate statutes, profit illegally, and desecrate the Constitution. *See, e.g.. Id* ¶ ¶181-188. Plaintiff wraps all of these far-flung allegations into two core contentions. First, they assert that Defendants' denial of purchase authorizations resulted in a battery of harms. Second, they contend that Defendants' allegedly nefarious and widespread conduct violates RICO.

On May 26. 2000. Defendants filed an answer to Plaintiffs' amended complaint, in which Defendants raise three counterclaims. See Defs.' Answer to Am. Compl.. Affirmative Defenses & Countercls. at *48-50* (hereinafter "Answer"]. On July 6, 2000, Defendants filed the motion for summary judgment presently before the Court.

## II. DISCUSSION

Federal Rule of Civil Procedure 56(c) requires a court to grant judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that the moving party is entitled to a judgment as a matter of law." *See* Fed. R. Civ. P. 56(c): *Tao* v. *Freeh,* 27 F.3d *635.* 638 (D.C. Cir. 1994). Although the court should draw all inferences from the supporting records submitted by the nonmoving party, the mere existence of factual dispute, by itself, is not sufficient to bar summary judgment. *See Anderson v. Liberty Lobby. Inc.,* 477 U.S. 242, 248 (1986). The adverse party's pleadings must evince the existence of a genuine issue of material *fact. See id.* at 247.48.

To be material, the factual assertion must be capable of affecting the substantive outcome of the litigation: to be genuine, the issue must be supported by sufficient admissible evidence such that a reasonable trier-of-fact could find for the nonmoving party. See *id.: Laningham* v *United States ,Navy,* 813 F.2d 1236. 1242-43 (D.C. Cir. 1987). Mere allegations or denials in the adverse party's pleadings are insufficient to defeat an otherwise proper motion for summary judgment. Rather, the nonmoving party bears the affirmative duty to present, by affidavits or other means, specific facts showing that there *is* a genuine issue for trial. See *id.* at 1248-49. The adverse party must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.,* 475 U.S. *574,* 586 (1986).

In their opposition. Plaintiffs appear to argue obliquely that Defendants' motion is premature because Plaintiffs have not been allowed adequate time for discovery. *See* Mem. of P. & A. in Supp. of Pls.' Opp'n to Defs.' Mat. to Dismiss or, in the Alternative, for Summ. J. at 1-2 n.2 (hereinafter "Pls.' Opp'n"].[4] Plaintiff's understanding of Rule 56 is faulty. Under Rule 56(b), a defendant may file a motion for summary judgment "at any time." *See* Fed. R. Civ. P.56(b). Rule 56(f) allows the non-moving party an opportunity to explain why further discovery is necessary:

> Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated

---

[4] In footnote 2 of their opposition, Plaintiffs recite the following language from *Lujan v. National Wildlife Federation.* 497 U.S. 871 (1990): "the plain language of Rule 56(c) mandates the entry of summary judgment, *after adequate time for discovery. . .*" *Id.* at 884 (emphasis supplied by Plaintiffs). Plaintiffs do not, however, indicate that they would like additional time for discovery, nor do they mention how such discovery would aid in defending against Defendants' motion. On the contrary, the quotation from *Lujan* is simply recited in the footnote, without any context whatsoever. *See* Pls.' Opp'n at 1-2 n.2.

> present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Fed. R. Civ. P. 56(f). In other words, the non-moving party can oppose the motion on the ground of incomplete discovery, but to do so it must "show that the requested discovery was necessary to oppose the... summary judgment motion." *Exxon Corp. v. FTC,* 663 F.2d 120, 128 (D.C. Cir.1980).

In this case, Plaintiffs have not stated that they wish to engage in discovery prior to the Court's consideration of Defendants' motion. Additionally, they have submitted no affidavits opposing the motion, and they have not explained why any discovery is "necessary to oppose [Defendants'] motion." *Id.* Accordingly, their footnoted insinuation that the motion is premature is unavailing.

### A. No Genuine Issue Regarding Defendants' Right to Refuse Charges

The first category of claims that Plaintiffs raise relates to American Express' allegedly wrongful decision to deny Plaintiffs authorization to use their corporate card account for several high-priced purchases in Bangalore, India.

Specifically. Plaintiffs contend that American Express led them to believe that their card had "no pre-set spending limit." Plaintiffs argue that. acting in reliance on that belief, they tried to use their corporate card account to pay for tens of thousands of dollars of jewelry accommodations, and airline tickets while traveling on business in India, Plaintiffs contend that American Express denied authorization for the purchases despite the promise of "no pre-set spending limit" and that, as a consequence. Plaintiffs suffered a variety of harms. In their opposition to Defendants' motion, Plaintiffs add the argument that thcy also attempted to use Jacobs' personal Gold Card to make the purchases, and that American Express denied authorization again. Sec' Pls.' Opp'n ¶ 2.

In their motion for summary judgment, Defendants assert that the "no pre-set spending limit" feature does not apply to corporate cards, and that the applicable agreements governing Corporate Platinum Cards and Gold Cards expressly allow American Express to deny authorization for any purchase. *See* Defs.' Mem. at 18-20.[5] Relying on their contractual rights, Defendants argue that they were not required to authorize limitless spending and that, accordingly. they are not responsible for any harms that may have flowed from Plaintiffs' inability to use their cards. See *id.* In their reply, Plaintiffs do not contest Defendants' assertions regarding the contractual provisions, but rather focus their energies on unleashing vitriol against the Defendants and the Court. *See* Pls.' Opp'n.

---

[5] Indeed, Plaintiffs themselves concede that "the American Express Corporate Card states that *"Under no circumstances can the Agreement governing the Corporate Card here be interpreted to provide unlimited spending authority."* Pls.' Opp'n ¶ 56 (emphasis in Pls.' Opp'n) (no citation in Pis.' Opp'n).

Defendants are correct that the applicable agreements unambiguously allow American Express to deny authorization for purchases. In the agreement that governs the relationship between American Express and Corporate Platinum Cardholders, including Plaintiffs, American Express "reserve[s] the right to deny authorization for any requested Charge." *See* Defs.' Mem. Ex. 5 ¶ 9. Similarly, the agreement between American Express and Gold Cardholders, like Jacobs, provides that American Express reserve(s] the right to deny any authorization for a charge for any reason." See *Id* Ex. 6 at 1.

These agreements plainly speak for themselves. *Cf. Adler v. Abramson,* 728 A.2d 86, 88 (D.C. 1999) (holding that a contract's plain language governs when it is susceptible of clear meaning). American Express is entitled to deny authorization for any charge. Because the contractual provisions are clear, and because Plaintiffs have not challenged them, the Court concludes that they govern the relationship between the parties in this case. Accordingly, in keeping with the clear contractual terms, American Express was within its rights when it denied authorization for Plaintiffs' attempted purchases.

Since American Express denial of authorization was contractually justified, it breached no duty owed to Plaintiffs. Accordingly, absent any breach of duty, the Defendants are not responsible for the harms that allegedly befell Plaintiffs as a consequence of the denial. Those alleged harms were caused not by American Express' failure to abide by the terms of the cardholder agreements, but rather by Plaintiffs' unsupportable belief that American Express would authorize any charge.

In more concise terms, the Court concludes that there are no genuine issues of fact material to American Express' rights and responsibilities under the applicable cardholder agreements. Because those agreements expressly allow American Express to deny authorization. the Court shall grant summary judgment in favor of the Defendants in regard to Plaintiffs' claims stemming from the denial of authorization for purchases in India.

### B. No Pattern of Racketeering Activity

Plaintiffs also allege that Defendants' conduct violated RICO. Working from the equipment financing dispute and the jewelry purchase dispute. Plaintiffs muster eighteen separate counts, each of which Plaintiffs characterize as racketeering activity prohibited under 18 U.S.C. § 1962. *See* Am. Compl. ¶¶ 189-305. In an apparent effort to satisfy the requirements of section 1962, Plaintiffs assert that Defendants' "pattern of racketeering activities is... evident from the previous number of RICO and other complaints that have been filed against the defendant American Express." Am. Compl. ¶ 136; *see also* Pls. Opp'n ¶ 41 ("Plaintiffs maintain that it is this list of former cases against the American Express that establishes a repeated pattern of racketeering activities in multiple schemes."). In support of that assertion. Plaintiffs list eighteen separate cases brought by various plaintiffs against American Express. *See* Am. Compl. ¶¶ 140-152.

A plaintiff that alleges RICO violations under section 1962 must, as an element of each RICO claim, establish that the defendant has engaged in (I) "a pattern of racketeering activity" or (2) the "collection of an unlawful debt." 18 U.S.C. § 1962; *see also H.J. Inc., v. Northwestern Bell Tel. Co.,* 492 U.S. 229, 232 (1989). In this case. Plaintiffs apparently seek to satisfy this RICO element by arguing that Defendants have engaged in a pattern of racketeering activity, and not by demonstrating that Defendants have engaged in the collection of an unlawful debt. *See,* e.g.. Am. Compl. ¶¶ 136-I52; Pls.' Opp'n ¶41.

Section 1961(1) provides a detailed list of the conduct that qualifies as "racketeering activity." *Sue* 18 U.S.C. § 1961(1). Section 1961(5). in turn, provides that a "pattern" of racketeering activity "requires at least two acts of racketeering activity, one of which occurred after [October 15, 1970,) and the last of which occurred within ten year... after the commission of a prior act of racketeering activity." 18 U.S.C. § 1961(5); *see also HJ. Inc..*

492 U.S. at 237 (commenting on the requirement of section *1961(5))*. In *H.J. Inc.*, the Supreme Court analyzed the "pattern" requirement in detail and determined that "to prove a pattern of racketeering activity a plaintiff... must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." *Id* at 239.

Plaintiffs' laundry list of prior lawsuits involving American Express does not establish that Defendants have engaged in a pattern of a racketeering activity. Notwithstanding Plaintiffs' allegations to the contrary, *see* Am. Compl. ¶ 136; PIs,' Opp'n ¶ 41, a defendant's simple involvement in an earlier lawsuit cannot, in and of itself qualify as a predicate act of racketeering that may be part of a pattern. RICO defines "racketeering activity" with great precision, and nothing in the definition indicates that participating as a defendant in a lawsuit qualifies. *See* 18 U.S.C. § 1961(1). To hold otherwise would impermissibly allow RICO plaintiffs to manufacture a pattern of racketeering activity simply by filing, or causing others to file, a flurry of lawsuits against prospective RICO defendants.

Although their amended complaint and opposition are far from clear on the point. Plaintiffs may he arguing that a pattern of racketeering activity is demonstrated by the actions at issue in the previous litigations. not by the simple fact that American Express participated in those cases. To the extent that Plaintiffs strive to make this argument, they have failed. Critically, Plaintiffs do not indicate precisely what conduct was at issue in those cases, why that conduct qualifies as a predicate act of racketeering, or how that conduct is related to any other supposed predicate acts. Instead. Plaintiffs simply list the case names and, in scattered and summary fashion, recite the portions of the decisions that contain the word "RICO." *See* Am. Compl. ¶ ¶ 136-152. As Defendants note, several of the listed cases never reached the merits or were decided in favor of American Express,[6] several focused on procedural or other issues only tangentially related to allegations of racketeering,[7] and several bore no direct relationship to RICO or racketeering activities whatsoever.[8] *See* Defs.' Reply to Pls.' Opp'n to Mot. to Dismiss or. in the Alternative, for Summ. J. at 6-7.

---

[6] *See. e.g.. In re American Express Company Shareholder Litigation,* 39 F.3d 395 (2dCir. 1994) (affirming district court's dismissal of RICO action against American Express); *Burdick v. American Express Co.,* 865 F.2d 527 (2d Cir. 1989) (dismissal based on plaintiff's lack of standing to bring RICO claim); *Pujol v. Shearson/American Express. Inc.,* 829 F.2d 1201(1st Cir. 1987) (same); *Leonard* v. *Shearson Lehman/American Express Inc.,* 687 F.Supp. 177(E.D.Pa. 1988) (reconsidering and affirming dismissal of RICO claims).

[7] *See, e.g.. Shearson/American Express v. McMahon,* 482 U.S. 220 (1987) (determining that RICO claims can be pursued via arbitration); *Gilmore v. Shearson/American Express, Inc.,* 811 F.2d 108 (2d Cir. 1987) (assessing arbitrability of RICO claim).

[8] *See. e.g.. Rodriguez de Quijas v. Shearson/American Express. Inc.,* 490 US. 477 (1989) (assessing the enforceability of a predispute agreement not to arbitrate claims under the Securities Act of 1933 and including citations to two cases that related to RICO);.

In sum, the Court concludes that Plaintiffs' list of cases against American Express does not, as a matter of law, qualify as a pattern of racketeering activity. Accordingly. Plaintiff has failed to establish one of the required elements of a RICO violation. Therefore, the Court shall grant summary judgment in favor of the Defendants as to Plaintiffs' RICO claims.

### C. Attorneys Fees and Sanctions Under Section 1927

Defendants conclude their motion for summary judgment with a request for attorneys' fees and costs. *See* Defs.' Mem. at 25-27. Arguing that Plaintiffs have proceeded with this litigation in bad faith and in an unreasonable and vexatious manner, Defendants ask the Court to impose Sanctions under 28 U.S.C. § 1927. *See Id.*[9]

In order to impose sanctions under section 1927. the Court must find that there has been "a clear showing of bad faith." *Olivieri v. Thompson.* 803 F.2d 1265. 1273 (2d Cir. 1986) (construing section 1927) (citations omitted). Even though district courts exercise broad discretion under section 1927, *see LaPrade v. Kidder Peabody & Co.,* 146 F.3d 899. 903-04 (D.C. Cir. 1998), they are cautioned to limit awards to cases in which "the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose." *Oliveri,* 803 F.2d at 1273.

---

[9] 28 U.S.C. § 1927 provides as follows:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs. expenses, and attorneys' fees reasonably incurred because of such conduct.

Unquestionably. Plaintiffs' conduct in this case has been "unreasonabl[e] and vexatious(]" at times. *See* 28 U.S.C. § 1927. Not only are all of their pleadings massive and labyrinthine, but they arc also replete with needless threats, denigrations and accusations directed at the Defendants [10] and the Court.[11] In light of the indignant and scathing rhetoric that fills most of the pages of Plaintiffs' briefs. Defendants have likely incurred substantial costs in striving to distill relevant factual allegations and legal arguments from the surrounding bombast.

Additionally, apart from their *ad hominem* attacks on the other actors involved in these proceedings, Plaintiffs have filed a variety of unorthodox and unapproved briefs. For example, after meeting with Defendants' counsel in an attempt to settle this case. Plaintiffs apparently determined that the defense lawyers had been enlisted in a broad American Express conspiracy, and Plaintiffs amended their complaint to reflect that perceived complicity. *See* Am. Compl. ¶2(N)-(O); 3(p)-(r). Plaintiffs also filed an unapproved surreply to Defendant's reply memorandum, and, after Defendants moved to strike it, Plaintiffs filed a truculent response. *See* Pls.' Response to Defs.' Mot. to Strike Pls.' Surreply.

---

[10] *See. e.g..* Pls.' Oppn ¶ 6 *("Plaintiffs will go to each and ever' Grand Jury until Julia McDermott* (American Express in-house counsel] *and her associates are indicted.* Plaintiffs are not ignorant as to whom the local defense attorneys answer.... ALL OF THOSE involved in the RICO crimes committed before this case was filed and during these Court proceedings will have their personal skeletons exposed and their moral character revealed.") (emphasis in original).

[11] *Sec.* e.g.. Pls.' Opp'n ¶*9[*7, 10 ("Judge Colleen Kollar-Kotelly has sanctioned these criminal actions with her compliance to the whims of the Defendants' attorneys, and she WILL disqualify herself for condoning this attempted murder.... The whole proceeding in the Court of Judge Colleen Kollar-Kotelly has been a sham.").

Nonetheless, despite the impropriety of much of Plaintiffs' conduct, the Court does not believe that it provides "a clear showing of bad faith or that it demands the conclusion that Plaintiffs are motivated by an improper purpose." *Olivieri,* 803 F.2d at 1273. Rather, Plaintiffs believe that they were injured in violation of the law, and this lawsuit is an effort to obtain redress. While this Court has determined that the harm Plaintiffs describe is not actionable as presented, that determination does not lead to the conclusion that Plaintiffs have acted in bad faith. Accordingly, the Court shall exercise its discretion and deny Defendants' request for an award of attorneys' fees and other costs under section 1927.

### D. Remand of Defendants' Counterclaims

In their answer to Plaintiffs' amended complaint, Defendants articulate three counterclaims.[12] Each of the counterclaims relies on state law alone, and, taken in aggregate. they do not demand relief in excess of $75,000. *See* Answer at 48-49, ¶¶ 33-40. Accordingly, this Court has neither federal question nor diversity jurisdiction to consider them. See 28 U.S.C .§ 1331, 1332.

Under 28 U.S.C. § 1367(a), in cases in which district courts have original jurisdiction over some claims, the courts may exercise supplemental jurisdiction over "all other claims that arc so related to the original claims that they form part of the same case or controversy under Article III." 28 U.S.C. §1367(a). Accordingly, because this Court has federal question jurisdiction over Plaintiff's RICO claims, it may also exercise supplemental jurisdiction over Defendants' counterclaims. Section 1367(c) provides, however, that "district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if... the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3).

This case presents precisely such a

---

[12] In their first counterclaim, Defendants allege breach of contract, asserting that Plaintiffs have failed to pay $32,845.98 that they owe on the corporate card account. *See* Answer at 48. ¶¶ 33-34. In their second counterclaim, Defendants argue that Plaintiffs committed fraud by inducing American Express to open the corporate account and permit various cardholders to use it. *See Id* at 48-49. ¶¶35-3 7. Finally, in their third counterclaim, Defendants argue that Plaintiffs's conduct in pursuing this litigation constitutes abuse of process. *See Id.* at 49 ¶¶ 38-40.

situation. The Court has dismissed all of the claims over which it had original jurisdiction; all that remain are state law claims that rely upon supplemental jurisdiction for this Court's review. Relying on its discretionary authority to decline supplemental jurisdiction under section 1367(c), the Court shall remand Defendants' counterclaims to District of Columbia Superior Court. *Cf. Dial A Car v. Transportation,* 884 F.Supp. 584, 593 (D.D.C. 1995) (declining to exercise supplemental jurisdiction over defendant's counterclaims after dismissing plaintiff's federal claims).

## III. CONCLUSION

As described in detail above, the Court concludes that Defendants are entitled to judgement on all of Plaintiffs' claims as a matter of law. Accordingly, the Court shall grant Defendants' motion for summary judgment. Because Plaintiffs have not clearly acted in bad faith, Defendants request for sanctions shall be denied. Additionally, the Court shall remand Defendants' counterclaims, all of which turn on questions of state law, to District of Columbia Superior Court. An Order accompanies this Memorandum Opinion.

October 12 ,2000

s/ Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

◊

## UNITED STATES DISTRICT COURT
## FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| SAMUEL JACOBS, et al<br>Plaintiff<br>v. | Civil Action No. 99cv2809<br>Judge Colleen Kollar-Kotelly |

AMERICAN EXPRESS COMPANY,
INC., et al

Defendant.

(Stamp)
Filed
MARCH 14, 2000
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

### ORDER
(March 14, 2000)

This matter is before the Court on *Plaintiffs' Motion for Continuance* of the mediation scheduled for April 6, 2000, which was filed March 10, 2000. Plaintiffs are requesting for a second time that the settlement mediation scheduled before Magistrate Judge John Facciola be continued for a thirty day period. Plaintiff Heckerman has claimed that she has to travel to Germany for medical treatment, and that both Plaintiffs were leaving imminently. Although the Court will grant the thirty days requested, it notes that the first time the mediation session, scheduled for January 24, 2000, was canceled on January 23, 2000, it was because Plaintiff Jacobs was ill. However, fourteen days later, Plaintiffs filed a new lawsuit with a Complaint numbering 129 pages with *25* attached exhibits. Once it appeared that

Plaintiffs were well enough to litigate another case, the Court requested that the mediation be rescheduled. If Plaintiffs plan on litigating this case, then they must make themselves available for court proceedings.

**WHEREFORE,** it is this 14 day of March, 2000, hereby

**ORDERED** that *Plaintiffs' Motion for Continuance* of the scheduled mediation on April 6, 2000, which was filed March 10, 2000, is hereby **Granted**; and it is

**FURTHER ORDERED** that mediation shall be rescheduled for the week of April 15, 2000.

s/Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

Copies to:
Samuel K. Jacobs
Nancy Heckerman
1050 17th Street, NW
Suite 600
Washington, D.C. 20036

Carol A. Kelley, Esq.
Hamilton Loeb, Esq.
Paul, Hastings, Janofsky & Walker, LLP
1299 Pennsylvania Avenue, NW
Tenth Floor
Washington, D.C. 20004

◊

(Dept. of Just. Logo) **U.S. Department of Justice**

Criminal Division

*Washington, D.C. 20530-0001*

May 15, 2001

Mr. Samuel K. Jacobs
1155 Connecticut Avenue NW, Suite 300
Washington, DC 20036

Dear Mr. Jacobs:

Thank you for your letter to the Attorney General. He has asked me to respond to you on his behalf regarding your concern about a decision issued by a federal court.

The Department of justice does not have the authority to review a court's decision. If you believe the decision is inappropriate, it may be challenged through the court's established procedures. You may wish to seek the advice of private counsel or guidance from your local legal aid organization regarding these procedures.

Thank you for writing to the Attorney General.

Sincerely,
s/Gwendolyn L. Turner
Gwendolyn L. Turner
Executive Office

◊

## UNITED DISTRICT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 00-7254**
**September Term 2000**
99cv02809

**Filed on:** (Stamp)
UNITED STATES COURT OF
APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAY 17 2001
CLERK

Samuel Jacobs and Nancy Heckerman,
Appellants

v.

American Express Company, et al.,
Appellees

**BEFORE**: Harry T. EDWARDS, Chief Judge; Stephen F. WILLIAMS, Douglas H. GINSBURG, David B. SENTELLE, Karen LeCraft HENDERSON, A. Raymond RANDOLPH, Judith W. ROGERS, David S. TATEL and Merrick B. GARLAND, Circuit Judges

## ORDER

Upon consideration of appellants' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

**Per Curiam**

FOR THE COURT:
Mark J. Langer, Clerk
BY: s/ Robert A. Bonner
Robert A. Bonner
Deputy Clerk

◊

# AFFIDAVIT

We declare under penalty of perjury, that to the best of our knowledge, the foregoing is true and correct. Executed on April 9, 2001 (Date).
s/ Samuel K. Jacobs (Signature), and
s/ Nancy Heckerman (Signature).

## I.

We, Samuel K. Jacobs K. Jacobs and Nancy Heckerman, are the Plaintiffs in a 'Complaint Under Racketeering Influenced Criminal Organization Act (RICO),' Case Number 99-2809, which was filed in the United States District Court For the District of Columbia on October 25, 1999, and the 'Amended Complaint' which filed on April 10, 2000. We are also the Appellants in the related appeal filed on January 4, 2001, Case Number 00-7254, in the United States Court of Appeals for the District of Columbia. The 'Complaint For Equitable Lien On Real Property' to which this Affidavit is attached is based upon the averments and actions in the aforementioned Complaint and Appeal, and we hereby state the following as relevant new evidence of criminal actions for which the Plaintiffs have requested relief in the aforementioned lawsuits.

## II.

In March, 2001, in Geneva, Switzerland, the Affiants met with an informant who was an employee for The American Express Company, Inc., its subsidiaries and affiliates, in South America. A meeting was arranged to discuss specifically how The American Express, Inc., avoided and violated the laws of the United States in their international divisions and operations which were, and still are, in the direct control of the parent corporation in New York City, New York.

The informant stated that all employees who left the company at that time were threatened by The American Express, Inc., not to disclose the confidential information or the threat of injury to them or their families might occur. Said informant and other parties moved their families to other countries.

The informant whom the Affiants met supplied information that could only be obtained from someone inside the company, or someone closely affiliated with the actions of the company, and the informant supplied said information with the knowledge that the facts and testimony would be used for the purpose of the Affiants' complaints in the United States District Court in Washington, D.C. The informant agreed to depositions at a future date, or to personally appear at trial if requested. The following statements were made by the informant, to-wit:

### III.

The informant was an employee of The American Express Company, Inc., in Venezuela during the 1980's. Informant stated that the invoices for the entire South American operation for The American Express, Inc., and all of its subsidiaries, (hereafter known as Amex), were sent to Caracas, Venezuela for collection.

The Bank of America in New York received the funds from the sales charged to The American Express and then transferred the funds to the agent bank, Banco Consolidado, in Caracas, Venezuela, for distribution to the other banks in the other South American countries to be dispersed for collection by the merchants.

The informant stated that in 1985, a verbal order came from New York not to send the payments immediately to the corresponding South American banks from Banco Consolidado in Caracas when the transfer came in from the Bank of America in New York.Instead of being distributed to the various banks for payments, the funds were transferred from the Banco Consolidado back to the Bank of America in New York.

## IV.

The funds were then re-transferred to one of the four branches of the Bank of America in Montserrat, Leeward Islands. The American Express Company, Inc., had accounts in several of those branches, but Branch number two had an account which was named "ZONIA," account number AJ533-732-856K, and this account was controlled by the authority of Jose Alvarez Stelling who was an American Express shareholder in Caracas, Venezuela.

The wire transfers to "ZONIA" were done on the authority of three people who each had to supply part of a series of numbers to transfer the funds. The three people involved were: 1) George P. Smith, then Vice-President for the Latin American

Division of The American Express Company, Inc., 2) an accountant working for Amex in Caracas, Venezuela, and 3) Estevan Raymundo De Oliveira, President of Banco Consolidado in Caracas.

The standard access code for "ZONIA" was "BLACKJACK." There was a separate code which was changed every three days by George Smith in New York for transfers to "ZONIA" from any other accounts.

For every transfer to "ZONIA" the code consisted of eleven digits. Five digits were supplied by George Smith, three digits by the accountant, and three digits by Estevan Raymundo De Oliveira. If any of these parties went on vacation, the "ZONIA game" stopped until all three were available again, or a new party could be substituted. The return digits to transfer the money back to Banco Consolidado from "ZONIA" were known only by Jose Alvarez Stelling.

## V.

From account code name "ZONIA" in Branch number two of the Bank of America in Montserrat, the funds were then transferred for overnight deposit to a bank in Doha, Qatar, in the United Arab Emirates, (U.A.E.), to another coded account named "JYREL." Through "JYREL" the money was invested overnight –every night—in investments which yielded very high profits of sometimes as much as twenty percent based on an annual percentage.

When a weekend was involved the profits ran the highest since the banks in the Middle East are not closed on Saturday and Sunday and there is a time zone advantage when transferring from the Americas to the Middle East. That is why the payout in Venezuela could take as much as four days, especially if a holiday in any of those countries was involved, and why those four day time periods were so important to the turnover for that money.

The next business day after the investment in the U.A.E., and before the banks opened in Venezuela, the money was wired back to the "ZONIA" account in the Bank of America in Montserrat from the bank in the U.A.E.

From "ZONIA" the original money, and its newly made interest, were sent back to the Bank of America in New York as a foreign account for the clearing of US Dollars.

From the Bank of America in New York, the original amount of funds which was to pay the merchants was transferred back to the Banco Consolidado in Caracas to one the regular American Express accounts in that bank, and the interest was sent back to "ZONIA" so it could be added to the next night's "game."

Finally, after a minimum of two days, the funds were wired from the Banco Consolidado to the accounts in the various banks in the other South American countries which were waiting to distribute the funds to the merchants.

## VI.

In actuality, the money never left New York. It all occurred on paper with wire transfers to and from the foreign banks through their New York correspondent banks without the money ever having left the United States since it was all in dollar accounts.

All US Dollar funds have to return to New York for clearing, but the foreign accounts do not have to report their incomes to the United States so the "ZONIA" accounts were always foreign.

VII.

The informant stated that the average amount turned around each day for these investments from South America was approximately $1.2 billion (One point two billion US Dollars), and that the interest made from these investments for the South American operation was estimated to run in the high nine figures during the course of a year. The informant further reminded the Plaintiffs that this amount of profit was ONLY for the South American division.

When these events were being conducted, Plaintiffs' informant stated that there were approximately 180,000,000 cardholders in South America in the late 1980's. Each card averaged five dollars per day in spending. Multiple all of those components together and the amount of money made playing the "ZONIA" game is staggering.

VIII.

Plaintiffs asked the informant if any of the other South American banks in the chain ever questioned this delay. The informant stated that only once, four months after "ZONIA" began, did an operator in Paraguay question why it was taking so long for them to receive the money. He was told it was because of some new "red tape."

IX.

Chargebacks to the merchants are normally handled in 30 days or less according to standard banking procedures. During this period when the informant was working for Amex the chargebacks came 38-41 days later, not 30 days, and there was a 7% fee for the transaction. This delay allowed the money to be deposited in "ZONIA" even longer, and the funds to be used for an increased amount of time for investments.

## X.

The other areas around the world each has a receiving center for that particular continent, or area, and each of these areas also participated in their own games of "ZONIA." The United States funds ran higher, and Europe and Asia have since greatly increased their operations.

For example, Zurich, Switzerland is the center for Europe, and Mumbai is the center for India, and each of these areas can also produce as much, if not more, than the South American "ZONIA" with all money from around the world being congregated in the Middle East every night for investment.

The Plaintiffs' informant stated that Japan has the highest number of Platinum Cardholders in the whole Amex organization.

## XI.

The informant stated that every three to four months a group of Falcons, Gulfstreams, Jetstars, and Lear jets landed in Montserrat, Leeward Islands, and 25-30 people gathered to divide the profits from "ZONIA." Among those who participated in the division of profits were: Jose Alvarez Stelling, G.P. Morgan (great grandson of J.P. Morgan), Albert Brown (then President of Bank of America), Averell Harriman, George P. Smith (American Express), Jose Alvarez Stelling and his partner (who was married to Ruth Lehrner, then Minister of Economics for Venezuela), and bankers from Antwerp who handled the proceeds from the jewelry profits. After the profits were divided every one departed and "ZONIA" and "JYREL" continued.

## XII.

The Plaintiffs are inquisitive as to how many stock holders and other participants were involved in the "ZONIA" games. How many of these people still divide the profits from "ZONIA"?

How much does the average stockholder receive in dividends from the "ZONIA" game?

Is the profit from "ZONIA" reported separately to the stockholders from the normal operations of the corporation?

How are the taxes on these profits for the corporation reported to the Internal Revenue Service, and are any of these activities in violation of Title 26 U.S.C.A.?

Are these "ZONIA" operations in violation of the laws governing the United States Securities Exchange Commission?

Are these "ZONIA" operations in violation of the United States banking laws under Title 12 U.S.C.?

The Affiants will send a copy of this "ZONIA" Affidavit and the attached to

'COMPLAINT FOR EQUITABLE LIEN ON REAL PROPERTY' to the appropriate departments and agencies for review, and for answers to these questions.

Affidavit pursuant to Title 28 United States Code Annotated §1746. Unsworn declarations under penalty of perjury.

See *Dickinson v. Wainwright*, 626 F.2nd. 1184, held that petition, which contained statement "I declare that under penalty of perjury that the foregoing is true and correct" above petitioner's signature, was sufficient even though certificate of oath may have been defective. One who subscribes to a false statement under penalty of perjury pursuant to federal statute may be charged with perjury just as if statements were made under oath. Title 18 U.S.C.A. §1621; Title 28 U.S.C.A. §1746.

◊

LAW 0FFICES OF

PAUL, HASTINGS. JANOFSKY & WALKER LLP
A LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

1299 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2400
TELEPHONE (202) 508-9500
FACSIMILE (202) 508-9700
INTERNET www.phjw.com

---

ROBERT P. HASTINGS (1910-1996)
COUNSEL
LEE 0. PAUL
LEONARD S. JANOFSKY
CHARLES N. WALKER

600 PEACHTREE ST., N.E., STE. 2400
ATLANTA. GEORGIA 30308-2222
TELEPHONE (404) 815-2400

399 PARK AVENUE
NEW YORK. NEW YORK 10032-4097
TELEPHONE (212) 318-6000

695 TOWN CENTER ORIVE
COSTA MESA, CALIFORNIA 92520-1924
TELEPHONE (714) 668-6200

345 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94104-2635
TELEPHONE (415) 835-1600

1055 WASHINGTON BOULEVARD
STAMFORD. CONNECTICUT 00901-2217
TELEPHONE (203) 961-7400

TOWER 42
25 OLD BROAD STREET
LONDON EC2N IHOQ
TELEPHONE 44 (171) 562-4000

ARK MORI BUILDING
12-32. AKASAKA I-CHOME
MINATO-KU. TOKYO 107, JAPAN
TELEPHONE (03) 3586-4711

555 SOUTH FLOWER STREET
LOS ANGELES. CALIFORNIA 90071-2371
TELEPHONE (213) 683-6000

WRITER'S DIRECT ACCESS (202)508-9535
ghloeb@phjw.com

November 22, 1999

BY FIRST-CLASS MAIL. FACSIMILE AND MESSENGER
Samuel K. Jacobs
Nancy M. Heckerman
1050 17th Street, N.W.
Suite 600
Washington, D.C. 20036

Re: *Jacobs. et al. v. American Express Company. Inc.. et al.* (No. 99-2809)

Dear Mr. Jacobs and Ms. Heckerman:

Included here is a Motion to Extend the Time to File Defenses and Objections, which was submitted today on behalf of the Defendants in the above-referenced proceeding.

As indicated in the motion, I have left messages for you, on November 16 and November 19, 1999, at the Rockville and D.C. telephone numbers that appear on documents in the exhibits to the Complaint. I have yet to hear from you. I again request here that you return my calls so that we may discuss and resolve your concerns in the most effective and efficient manner.

It is our position that by filing your Complaint you have deliberately misused the judicial process by knowingly pursuing baseless allegations, including that the Defendants have violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962. You have also named as defendants persons, including spouses of American Express officers, who have nothing to do with your allegations about your use of your American Express card abroad. Such willful misconduct mandates the imposition of sanctions, including in the form of an award of attorneys' fees and costs incurred by the Defendants in their defense against the accusations you have made. *See Wallace v. Skadden, Arps, Slate, Meagher & Flom, LLP,* No. 98-1946, slip. op. at 10-11 (J. Kollar-Kotelly) (D.D.C. Sept. 13, 1999) (awarding attorneys' fees against *pro se* plaintiff in civil RICO action) (copy included here). We thus urge you to reconsider your decision to proceed as you have against the Defendants.

I look forward to speaking with you at your earliest convenience.

Sincerely,

S/Hamilton Loeb/CAK

Hamilton Loeb
of PAUL, HASTINGS, JANOFSKY &
WALKER LLP

Enclosures
Also by mail to:
Main Street Computer Systems, Inc.
1700 Rockville Pike, Suite 400
Rockville, MD 20852

◊

The following Order and Memorandum were attached to the above letter on November 22, 1999:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KATHERINE T. WALLACE, PH.D.,

Plaintiff,

v.

Civil Action No.
98-1946 (CKK)

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM, LLP, *et al.*,

Defendant.

(Stamp)
Filed
SEPTEMBER 13, 1999
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

## ORDER

For the reasons stated in the accompanying Memorandum Opinion, the Court hereby grants Defendants' Motion to Dismiss, and orders Plaintiff to pay all attorneys' fees and costs, pursuant to 28 U.S.C. §1927. It is therefore, on this .JL day of September, 1999,

ORDERED that Defendants' Motion to Dismiss is GRANTED; and it is further

ORDERED that Plaintiffs Complaint is DISMISSED in its entirety with prejudice; and it is further

ORDERED that Plaintiff's Motion for Partial Summary Judgment [#5] is accordingly rendered MOOT; and it is further

ORDERED that Defendants' Motion to Stay Plaintiffs Motion for Partial Summary Judgment [#8] is accordingly rendered MOOT; and it is further

ORDERED that Defendants' request for reasonable attorneys' fees and costs, pursuant to 18 U.S.C. § 1927, is GRANTED; and it is further

ORDERED that Defendants shall submit an affidavit and documentation in support of their request for reasonable attorneys' fees and costs by October 1, 1999; Plaintiffs Response thereto shall be due October 15, 1999; and Defendants' Reply shall be due October 25, 1999.

SO ORDERED.

s/ Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

◊

## UNITED STATES DISTRICT COURT
## FOR THE DISTRICT OF COLUMBIA

KATHERINE I. WALLACE, PH.D.,

Plaintiff,
v.

Civil Action No.
98-1946 (CKK)

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM, LLP, et al.,

Defendants

Filed
SEP 1 3 1999
NANCY MAYER WHITTINGTON,CLERK
U.S. DISTRICT COURT

## MEMORANDUM OPINION

Plaintiff, Dr. Katherine T. Wallace, brings this action in federal court alleging that Defendants Skadden, Arps, Slate, Meagher & Flom ("Skadden"), et al, engaged in a pattern of racketeering activity in violation of the Racketeer Influenced and Corrupt Organizations Act of 1970 ("RICO"), 18 U.S.C. § 1962(c) and. (d). The circumstances precipitating this action arose out of two lawsuits Dr. Wallace had initiated in District of Columbia Superior Court against Skadden, where she was employed as an associate prior to her termination in 1995. One alleged defamation against her, the other discrimination on the basis of her race and marital status. In the course of preparing for those suits, Dr. Wallace contends that Skadden offered and provided free legal representation to an assortment of former employees whom Dr. Wallace had subpoenaed as third-party witnesses. In Dr. Wallace's view, this free representation amounted to bribery, obstruction of justice, and witness tampering, all intended to harm Dr. Wallace as she attempted to litigate her claims. Claiming that Skadden is an "enterprise" as contemplated by 18 U.S.C. § 1962, Dr. Wallace filed this action in federal court pursuant to RICO.

Defendants moved to dismiss Dr. Wallace's case in its entirety, pursuant to Fed. R. Civ P. 12(b)(6), contending that Dr. Wallace fails to State a claim for which relief can be granted. In particular, they challenge the legal predicates for Dr. Wallace's RICO action, and maintain that this action essentially embellishes potential questions of discovery and legal ethics into a fanciful tale of racketeering. Because the Court agrees with Defendants that Dr. Wallace fails to state a legally cognizable claim under RICO, it shall grant Defendants' Motion to Dismiss, and shall dismiss Dr. Wallace's case in its entirety.[1]

---

[1] Dr. Wallace filed a Motion for Partial Summary Judgment on the same day that Defendants filed their Motion to Dismiss. Because the Court dismisses Dr. Wallace's Complaint on its face, it does not need to reach her summary judgment motion. In addition to filing that motion, Dr. Wallace has requested in her Opposition to Defendants' Motion to Dismiss that this Court consider the additional materials she has submitted in support of that Opposition. A court may decide to convert a motion to dismiss into one for summary judgment where matters outside the pleadings are presented, and where the court opts to review such matters. *See* F. Rule. Civ. P. 12(b). "There are constraints on a court's ability to thus transform a motion to dismiss, however. Specifically, Rule 12(b) provides further that, if a motion to dismiss is converted to

## I. BACKGROUND.

For the most part, the essential facts in this action are not in dispute. Rather, the parties dispute why certain events occurred, and what those events signify with respect to Defendants' motives. Plaintiff Dr. Wallace, an African American woman, was employed as an associate in Skadden's Washington, D.C. office from September 1993 to September 1995, when her employment was terminated. *See* First Am. Compl. ¶ ¶ 3-6. Following this termination, Dr. Wallace filed and herself began to litigate two successive lawsuits against the firm, one alleging defamation ("Defamation case"), and the other alleging employment discrimination and discriminatory termination on the basis of her race and marital status ("Discrimination case").[2] The District of Columbia Superior Court dismissed both cases, but the District of Columbia Court of Appeals reinstated a portion of the Defamation case and the entire Discrimination case.*See Id.* ¶ ¶ 9-16; *see also Wallace v. Skadden, Arps. Slate. Meagher & Flom et. al.,* 715 A.2d 873 (D.C. Ct.App. 1998).

---

a motion for summazy judgment, 'all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule *56."' Te!e-Communications of Key West, Inc. v. United States, 757* F.2d 1330, 1334 (DC. Cir. 1985). Here the Court sees no advantage to either party, nor to the interests of justice, to effect the conversion which Dr. Wallace requests.

[2] Dr. Wallace has three children. *See* First Am. Compl. ¶ 11. Although she does not discuss her marriage in the Complaint, she does mention her husband elsewhere in her pleadings.

It was during discovery for those cases that the events animating the instant action arose. Principally, Dr. Wallace feels that her attempts to conduct discovery were thwarted when Skadden, the lawyers representing Skadden in those cases, and various third party witnesses whom Dr. Wallace sought to depose regarding her employment with Skadden, all conspired to undermine her litigation efforts. *See id.* ¶ ¶ 20-22. In her Complaint, Dr. Wallace alleges that each and every named Defendant participated in this process by controlling and frequently rendering inaccessible testimony which she endeavored to procure in the course of discovery.[3] *See Id.* ¶ ¶ 23-170. Dr. Wallace has never litigated these issues in Superior Court.

## II. DISCUSSION

### A. Evaluating Dr. Wallace's Complaint on a Motion to Dismiss

When ruling on a motion to dismiss, district courts must afford the complaint a charitable reading, giving Plaintiff the benefit of all inferences that can be derived from the facts alleged.*EOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997). Here, the

---

[3] Since Dr. Wallace has structured her Complaint with a good deal of repetition as a kind of inventory of each putatively conspiratorial activity (although never indicating how she became aware of this conspiracy or what exactly its effects were), the Court finds no need to elaborate on each Count therein.

Court remains especially mindful of its duty to Dr. Wallace in light of the fact that she is proceeding *pro se* in this action. As a general matter, complaints filed by pro *se* plaintiffs are held "to less stringent standards than formal pleadings drafted by lawyers." *Estelle v. Gamble,* 429 U .S. 97, 106 (1976); *see also Moore v. Agency for Int'l Development et a!., 994* F.2d 874, 876 (D.C. Cir., 1993). While Dr. Wallace herself is an attorney, the Court still grants her complaint a liberal construction; indeed, she has already amended it once. Nonetheless, her complaint, "like any other, must present a claim upon which relief can be granted by the court." *Crisafi* v. *Holland, 655* F.2d *1305,* 1308 (D.C. Cir. 1981).

In *Kowal* V. *MCI Communications Corp.,* 16 F.3d 1271 (D.C. Cir. 1994), the District of Columbia circuit admonished that, despite this liberal construction, "the court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint. Nor must the court accept legal conclusions cast in the form of factual allegations." *Id.* at 1276; *see also Brug v. Nat'! Coalition for Homeless, 45* F.Supp.2d 33, 36 (D.D.C. 1999). To survive a motion to dismiss, a complaint must, at the very least, forge a plausible connection between the facts it alleges and cognizable legal claims. "[B]are 2 conclusions of law, or sweeping and unwarranted averments of fact, will not be deemed admitted for purposes of [a motion to dismiss]." *Haynesworth v. Miller,* 820 F.2d *1245,* 1254 (D.C. Cir. 1987). Although the Court draws all reasonable inferences from

Dr. .Wallace's complaint, then, it need do only that: derive those inferences that are reasonable. "While ordinarily the facts alleged in a complaint will be accepted as true for purposes of resolving a motion to dismiss, in the absence of any facts of record supporting a claim for relief, the moving party is entitled to judgment as a matter of law." *First Chicago Int'l v. United Exchange Co., Ltd., 655* F.Supp. 787, 795 (D.D.C. 1987) (citations omitted).

### B. Dr. Wallace's RICO claim

Despite its *52* counts (170 paragraphs), Dr.. Wallace's First Amended Complaint alleging a violation of RICO fails to meet the criteria necessary to survive Defendants' 12(b)(6) motion. Dr. Wallace claims that, in offering and providing gratuitous legal services to its former employees during the course of the Superior Court proceedings against the firm, Skadden engaged in a pattern of racketeering activity consisting of bribery (pursuant to 18 U.S.C. § 201), obstruction of justice (pursuant to 18 U.S.C. § *1503),* and witness tampering (pursuant to U.S.C. § 1512(b). In order to state a claim under civil RICO, Dr. Wallace must show (1) a violation of the substantive RICO statute, here 18 U.S.C. § 1962, and (2) an injury to the plaintiffs "business or property" by reason of that violation. *See Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union* 639, 913 F.2d 948, 950 (D.C. Cir. 1990). A plaintiff may allege violations of state law as predicates of a RICO claim only with regard to "murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical...." 18 U.S.C. § 1961 (1)(A). Otherwise she must charge the defendant under federal law. To avail herself of RICO's civil remedies, Dr. Wallace must properly plead each element of the predicate acts underlying her RICO claim—bribery, obstruction of justice, and witness tampering. Accordingly, the Court shall examine Dr. Wallace's contentions with respect to each predicate act in turn.

### 1. *Bribery*

Dr. Wallace claims that Skadden and the other Defendants engaged in bribery, specifically "(a) bribery of and offers of bribes to third-party witnesses called by or designated to be called by Dr. Wallace to give testimony under oath before an officer authorized by law to take testimony... ; (b) demands for and acceptance and receipt of bribes by third-party witnesses called by or designated to be called by Dr. Wallace to give testimony under oath before an officer authorized by law to take testimony... ." First Am. Compl. ¶ 21. Underlying these claims is an assumption that, in offering and providing legal representation free of charge to its former employees in the course of litigation that concerned their employment with Skadden, the firm and all other parties involved in the litigation acted out of illegal motives and/or corrupt intent.

Section 201 of 18 U.S.C. requires Dr. Wallace to prove that, either directly or indirectly, Defendants corruptly gave, offered, promised, demanded, sought, received, accepted, or agreed to receive or accept, anything of value in exchange for influencing or being influenced with regard to a witness's testimony under oath. *See* 18 U.S.C. § 201 (b) (3) and (4). As Defendants correctly point out, however, "(i]n support of her bribery allegation, Plaintiff claims only that cost-free legal representation was offered, provided, requested and received in return for influencing or otherwise impacting testimony." Mot. Dismiss at 11. Never in her Amended Complaint does Dr. Wallace explain how Skadden'S provision of this free representation to its subpoenaed former employees *per se* constitutes a corrupt act.[4] Rather, she seems to infer a corrupt

---

[4] Instead of providing evidence of a corrupt motive, Dr. Wallace makes conclusory statements such as the following:

> Defendant Richard Brusca, partner in Skadden Arps and member of the District of Columbia and New York Bars, in conspiracy with and at the direction of the Discrimination Case Defendants as well as Defendant Goetz, Defendant Schwartz who is partner and firm-wide litigation practice leader of Skadden Arps and Defendant Baer who is counsel to arid employment lawyer for Skadden Arps, contacted third party witness Robinson and offered him cost-free legal services to be paid for by Skadden Arps with the intent of influencing his testimony under oath at and/or persuading him to absent himself from the deposition to which he was compelled.

First Am. Compl. ¶ 26. Despite the particularity with which she enumerates the parties involved in the putative conspiracy, Dr. Wallace utterly fails to particularize or substantiate the claim that this offer of cost-free legal motive from the fact that Skadden offered free legal services, and simultaneously to assume that such an offer is necessarily corrupt.

Dr. Wallace fails to provide any corroboration of Defendants' putatively corrupt intent, or of the fact that any influence of witness testimony was sought or achieved by Defendants, together or separately. Dr. Wallace ascribes illegal motives to otherwise legal activities, and then characterizes those activities as furthering Defendants' generally illegal scheme. In doing so, Dr. Wallace presumes what she purports to establish, *i.e.*, that Defendants acted nefariously in offering and providing free representation to witnesses in order to control their testimony and thereby obstruct justice. Because Dr. Wallace begins from the assumption that providing legal services to former employees where those employees are subpoenaed as witnesses in a lawsuit against the firm for which they worked is *per se* illegal, and yet provides no statutory or case law support for this assumption, everything she alleges subsequently to corroborate her claim remains bare and conclusory.

### 2. *Witness tampering*

Dr. Wallace also claims that Defendants engaged in witness tampering in violation of 18 U.S.C. § 1512. This statute provides, in relevant part, that:

---

services was tendered "with the intent of influencing his testimony under oath... ," or with any other nefarious motive.

> Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person with intent to (1) influence, delay, or prevent the testimony of any person in an official proceeding; (2) cause or induce a person to withhold testimony.., from an official proceeding; evade legal process summoning that person to appear as a witness... in an official proceeding; or be absent from an official proceeding to which such person has been summoned by legal process.., shall be fined.., or imprisoned ... or both.

18 U.S.C. § 1512(b). Defendants counter, however, that "Plaintiff did not and cannot plead the requisite nexus between the Defendants' conduct and an 'official proceeding."' Mat. Dismiss at 15. In support of this contention, they refer the Court to *United States v. Allen,* 729 F. Supp. 120 (D.D.C. 1989), which states that "the D.C. Superior Court is clearly not within this definition." *Id.* at 121 (citing, *inter alia, Park South Associates v. Fischbein,* 626 F.Supp. 1108 (S.D.N.Y.), *affd,* 800 F.2d 1128 (2d Cir.198$^{6}$) (holding in a civil RICO suit that state court proceedings were not official proceedings for purposes of 18 U.S.C. S *1512)).* Because the events of which Dr. Wallace complains took place in the course of discovery for cases pending before the District of Columbia Superior Court, she has failed adequately to plead the requisite

elements of section 15 12(b).

In addition to this failure, though, Dr. Wallace has again neglected to offer anything to substantiate this claim beyond mere conclusory allegations. Her charge of witness tampering once again rests on the assumption that Skadden's offer of legal representation to its former employees itself constitutes an illegal attempt to influence witness testimony. The Court does not agree. As Defendants have justly noted, "[t]he conduct Plaintiff challenges violates no law or ethical rule. Rather, it comports with common practice... ." Mat. Dismiss at 2. It is commonplace for employers to offer legal representation to former employees who are subpoenaed to testify in cases pertaining to that employment. That practice alone does not support a RICO claim or its predicate acts without additional allegations from which a court could reasonably infer illegality.

### 3. *Obstruction of justice*

Dr. Wallace's obstruction of justice claim suffers from the same lack of substance. Defendants point out, and the Court agrees, that Dr. Wallace fails to plead a threshold element of this claim as well. Conduct obstructing justice must take place in a "court of the United States" to qualify as obstruction of justice under 18 U.S.C. § 1503(a). This court found, in *United States v. Smith,* 729 F.Supp. 1380 (D.D.C. 1990), section 1503 to require that the "proceedings must in fact be federal for the charge [obstruction of justice] to lie." *Id.* at 1386 (citations omitted). As was true in part in that case, the proceedings before which Dr. Wallace alleges Defendants to hive obstructed justice by "knowingly and corruptly influencing, obstructing, and impeding the due administration of justice and/or corruptly endeavoring to do so," First Am. Compl. ¶ 21, took place in a District of Columbia Superior Court, and not in a federal court. Therefore section 1503 is inapposite, and the charge cannot lie.

Dr. Wallace has indicated that she would like leave to amend her Complaint once again, if the Court deems it necessary, in order to substitute District of Columbia statutes .prohibiting bribery for the latter two federal statutes she cites. *See* Pl.'s Mem. Opp: Mat. Dimiss at 16, 22-24. In so doing, she hopes to circumvent the jurisdictional problems her obstruction of justice and witness tampering claims present. While such a substitution might cure her jurisdictional problems, it would ultimately prove futile, since Dr. Wallace continues to rely on mere conclusory allegations. Moreover, Dr. Wallace's gesture indicating her desire to amend falls short of what Local Rules require; thus she "fail[s] to tender a proposed amended complaint pursuant to Local Rule 108(i), which states that '[a] motion for leave to file an amended pleading shall be accompanied by an original of the proposed pleading as amended."' *Kowal.* 16 F.3d at 1280 (citing District of Columbia Local Rule 108(i)).

Defendants advance several additional arguments in their Motion to Dismiss as to why the Court should dismiss Dr. Wallace's Complaint. Because the Court dismisses her Complaint in its entirety on the grounds expressed in the foregoing discussion, though, the Court need not reach the additional arguments proffered by Defendants.

### C. Attorneys' fees under 28 U.S.C. § 1927

Finally, Defendants charge that, because "Plaintiffs claims are not only baseless, but ... are highly inflammatory and malicious and it is clear she acted in bad faith, vexatiously, wantonly, or for oppressive reasons... ," Mat. Dismiss at 20-21 (citing *John Akridge Co. v Travelers Cos.,* 944 .F.Supp. 33, 34-35 (D.D.C. 1996)), this Court should award them attorneys' fees and costs.[5] Dr. Wallace never addresses this charge, except to conclude her —Opposition to Defendants' Motion to Dismiss by asserting, "[f]or all the foregoing reasons, Defendants' Motion to Dismiss and for costs must be denied..." Mem. Supp. Opp. Mot. Dismiss at 30. Since she provides no direct opposition to Defendants' request for fees and costs under section 1927, the Court will take her silence on this issue as a concession. Before the Court, then, is an uncontroverted record suggesting that Dr. Wallace has engaged in this litigation out of bad faith. *See* Mot. Dismiss at 21; *see also Qlivieri v. Thompson,* 803 F.2d 1265, 1273 (2d Cir. 1986) ("[A]n award under § 1927 is proper when the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose... ."). Because the Court finds that Dr. Wallace's Complaint utterly lacks merit, and because she has not offered any arguments opposing Defendants' request for attorneys' fees and costs, the Court shall rant this request as well.

---

[5] 28 U.S.C. § 1927 provides: "Any attorney or other person admitted to conduct cases in any court of the United States.., who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

## III. CONCLUSION

Dr. Wallace's RICO claim constitutes a creative, but ultimately illusory, apparatus within which to understand the discovery disputes that have left her dissatisfied. Not only does she present no evidence in her Complaint which would give rise to a reasonable inference of illegality under RICO or the predicate statutes she cites, but moreover, these circumstances bear no resemblance to those Congress wished to reach in enacting RICO. RICO provides another weapon in the fight against organized crime. *See Sedima, S.P.R.L. v. Imrex Co.,* 473 U.s. 479, 484 (1984). ("In summarizing the bill on the House floor, its — sponsor described the treble-damages provision as 'another example of the antitrust remedy being adapted for use against organized criminality."' 116 Cong.Rec. 35295 (1970)). The *Sedima* Court also expressed some chagrin at the extent to which the uses of RICO had .diverged from those Congress intended, although it recognized that this divergence in part stems from the breadth of the statute. *See id.* at 498-500. Nonetheless, this Court finds that, in the absence of anything in her Complaint beyond conclusory allegations and "sweeping and unwarranted averments of fact," *Haynesworth,* 820 F.2d at 1254, RICO's breadth does not reach the activities Dr. Wallace alleges here.

For the foregoing reasons, Defendant's Motion to Dismiss is GRANTED.

An order accompanies this memorandum opinion.

September 13 , 1999

s/ Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

## CONSTITUTIONAL PROVISIONS

**Article II, Section 3**: ". . . he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."

**Article III, Sections 3**: "Treason against the United States, shall consist only in levying War against them, oar in adhering to their Enemies, giving them Aid and Comfort. . . ."

**Article IV, Section 2**: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

**Article VI, Paragraph 2**: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

**Amendment V**: ". . .nor be deprived of life, liberty, or property, without due process of law;"

**Amendment VII**: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . ."

**Amendment XIV, Section 1**: ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

◊

## STATUTORY PROVISIONS INVOLVED

### Title 15 U.S.C.A. § 1600, et seq.
### CONSUMER CREDIT PROTECTION ACT (15 U.S.C.1601 et seq.)

And at the end thereof the following new title:

### TITLE VIII—DEBT COLLECTION PRACTICES ACT, and may be cited as
### 'Fair Debt Collection Practices Act'

**§ 806. Harassment or abuse.** (15 U.S.C. 1692d.)

"A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the debt of collection. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

> "(1) The use or threat of violence or other criminal means to harm the physical person, reputation, or property of any person.
>
> "(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3) of this act.

"(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

**§ 807. False or misleading representations** (15 U.S.C. 1692e)

"A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

"(2) The false representation of –

"(A) the character, amount, or legal status of any debt; or

"(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

"(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

"(8) **Communicating or threatening to communicated to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.** (Emphasis added).

"(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

## REGULATION B EQUAL CREDIT OPPORTUNITY (12 CFR 202) known as the EQUAL CREDIT OPPORTUNITY ACT of the Consumer Protection Act

Pertinent parts of the "Truth in Lending Act" Regulation Z, Title 28 U.S.C.A. § 1601 et seq. are as follows:

### SECTION 142—Advertising or Downpayments and Installments

NO advertisement to aid, promoted, or assist directly or indirectly any extension of consumer credit may state:

(1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.

(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually customarily arranges downpayments in that amount. (emphasis added).

### SECTION 143—Advertising of Open End Credit Plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any to the specific terms of that plan unless it also clearly and conspicuously sets forth all of the following items:

(1) Any minimum or fixed amount which could be imposed.

(2) In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(3) Any other term that the Board may by regulation require to be disclosed.

**SECTION 202.2—DEFINITIONS**

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

(c) *Adverse action.* (1) The term means—

(i) a refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) a termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of creditor's accounts; or

(iii) a refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include—

(i) a change in the terms of an account expressly agreed to by an applicant;

(ii) any actiOn-or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;

(iii) a refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the Creditor's accounts, or when the refusal is a denial of an application for an increased in the amount of credit available under the account;

(iv) a refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) a refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2).

(g) *Business credit* refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in section 202.3(a), (b), and (d).

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without a special effort to collect at or after maturity).

(r) *Good faith* means honesty in fact in the conduct or transaction.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(w) *Open-end credit* means credit extended under a plan under which a creditor may permit an applicant to make purchases to obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all of part of the applicant's income derives from any public assistance program; **or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.** (emphasis added).

## SECTION 202.4—GENERAL RULE PROHIBITING DISCRIMINATION

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

## SECTION 202.5—RULES CONCERNING TAKING OF APPLICATIONS

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, I advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) General rules concerning requests for information. (1) Except as provided n paragraphs (c) and (d) of this section, a creditor may request any information in connection with an application.[18]

## SECTION 202.6—RULES CONCERNING EVALUATION OF APPLICATIONS

(a) *General rule concerning use of information.* Except as otherwise provided in the act and this regulation, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis.[19]

(6) *Credit History.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualifies applicants for a similar type and amount of credit, in

---

[18] This paragraph does not limit or abrogate any federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

[19] Abermarle Paper Co. v. Moody, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

evaluating an applicant's creditworthiness a creditor shall consider—

(i) the credit history, when available, of accounts designated as accounts that the applicant and applicant's spouse are permitted to use for which both are contractually liable;

(ii) on the applicant's request, any information the applicant may present that tends to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

## SECTION 202.9—NOTIFICATIONS

(a) *Notification of action taken,* ECOA notice, and statement of specific reasons. (1) When notification is required. A creditor shall notify an applicant of action taken within—

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section:

(iii) 30 days after taking adverse action of an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the act; the name and address of the federal agency that administers compliance with respect to the creditor; and either—

(i) a statement of specific reasons for the action taken; or

(ii) a disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and the telephone number of the person or office from which the statement of reason can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(b)(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score of the creditor's credit scoring system are insufficient.

## SECTION 202.12—RECORD RETENTION

(b) Preservation of records.

(2) Existing accounts. For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof—

(i) any written or recorded information concerning
the adverse action; and

(ii) any written statement submitted by the
application alleging a violation of the act or this
regulation.

(4) Enforcement proceedings and investigations. A creditor shall retain the information specified in this section beyond 25 months (12 months for business credit) if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation by the attorney general of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or if is has been served with notice of an action filed pursuant to section 706 of the act and section 202.14 of this regulation. The creditor shall retain the information until

final disposition of the matter, unless an earlier time is allowed by order of the agency of court.

## SECTION 202.14—ENFORCEMENT, PENALTIES, AND LIABILITIES

(2) As provided in section 706(f), a civil action under the act or this regulation may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the attorney general of the United States within two years after the alleged violation.

◊

## Title 18 U.S.C.A. § 242. Deprivation of rights under color of law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishemtn of citizens, shall be fined under this title punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than one year or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

### Title 18 U.S.C.A. § 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United State, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. (previously, § 37 of the Penal Code, and before that, § 5440, Rev. Stats.)

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

**Title 18 U.S.C.A. § 1506. Theft or alteration of record or process; false bail.**

Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or

Whoever acknowledges, or procures to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same—

Shall be fined under this title or imprisoned not more than five years, or both

**Title 18 U.S.C.A. § 1512 (b). Tampering with a witness, victim, or informant.**

Whoever knowingly uses intimidation or physical force, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(a)(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than ten years, or both.

(d) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) in a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

(2) that the judge is a judge of the United States or that the law enforcement officer is

an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government as an adviser or consultant.

(g) There is extraterritorial Federal jurisdiction over an offense under this section.

**Title 18 U.S.C.A. § 1951. Interference with commerce by threats or violence.**

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

**Title 18 U.S.C.A. § 1956(c)(7)(D). Laundering of monetary instruments.**

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not there than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or 'transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in 4he United States to or through a place outside the United States or to a place in the United States from or through a place outside the United

States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or In part—

(i) to conceal or disguise 'the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described In subparagraph. (B), the' defendant's knowledge may be established by proof 'that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or. actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the. carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to he the proceeds, of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title 'or 'imprisoned for not more than 20 years, or both. For purposes of this paragraph and' paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations, of this section.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(1) the value of the 'property, funds, or monetary -instruments involved in the transaction; or

(2) $10,000.

(c) As used in this section—

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or

not such activity is specified in paragraph (7);

(2) the term "'conducts" includes initiating, concluding, or participating in initiating, or con a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transactions" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is

(5) the term "monetary instruments" means (i) coin or currency of the United States or of any other country, travelers' cheeks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 3I, United States Code, or the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means—

(A) any act or activity constituting an offense listed in section 1961(1)of this title except an act which is indictable under subchapter II of chapter 3 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosives or fire;

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21U.S.C. 848);

(D) an offense under section 32(relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 115 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section' 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody); section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials); section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services),,[3] section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass' destruction), section 2332b (relating- to international terrorist acts transcending national boundaries), or section 2839A (relating to providing material support to terrorists) of this' title, section 46502 of title 49, United 'States Code;,[3] a- felony violation of the Chemical Diversion' and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled' Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, and felony violation of section 15 of the Food Stamp Act of, 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the foreign Corrupt Practices Act; or

(E) a felony, violation of the Federal Water Pollution Control Act (33U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent. Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et. seq.).

(F) Any act or activity constituting an Offense involving a Federal health care offense.

(8)the term "State" includes a State of the United States, the District of Columbia, and commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (e)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct and the National Enforcement Investigations Center, of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part In the United States; and

(2) the transaction or series of related transactions involve funds or monetary instruments of a value exceeding $10,000.

(g) **Notice of conviction of financial institutions**.—If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any' person who conspires to commit any offense defined in this section1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

**Title 18 U.S.C.A. § 1961(1). Definitions.**

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471; 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891—894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection, with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1843 (relating to wire fraud), section 1344 (relating to' financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461—1465 (relating to obscene matter), section 1503 (relating to obstruction of justice),

section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of ,wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling business), section 1956 (relating to the laundering of monetary instruments), Section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 ( relating to use of interstate commerce facilities in the commission of murder- for- hire), sections 2251, 2251A, 2252 and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 ( relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copy right), section 2319A(relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320(relating to trafficking in goods or services bearing counterfeit marks), sections2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking contraband cigarettes), sections 2421-24(relating to white slave traffic), (C) any act which is indictable under title 29,United States Code, section 186 ( dealing with restrictions on payments and loans to labor organizations), or section 501 (c) (relating to embezzlement from union funds), ( D ) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, receiving, ,or otherwise dealing in a controlled substance or listed chemical ( as defined in section 102 of the controlled substance Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278(relating to importation of alien for immoral purpose) if the act is indictable under such section of such Act was committed for the purpose of financial gain;

(2) "State" means any State of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4)"enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State, or political subdivision thereof , or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of a value at rate usurious under State or Federal law, where the usurious rate is at least twice enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney

General and charged with duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) " documentary material" includes any book, paper, document, record, recording or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United states, the Associate Attorney General of the United States, any Assistant General of the United states, or any employee of the Department of Justice, or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

**Title 18 U.S.C.A. § 2071. Concealment, removal, or mutilation generally.**

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the united State, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both. Appendix.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilated, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

**Title 18 U.S.C.A. § 2384. Seditious conspiracy.**

If two of more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United State contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both. Also, see Act July, 1861 (Acts 1861, c. 128; 12 Stat. 502).

◊

**Title 28 U.S.C.A. § 144. Bias and prejudice of judge.**

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reason for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be head, or good cause shall be shown for failure to file it within such time. A party may file may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

**Title 28 U.S.C.A. § 372 (c)(1). Retirement for disability; substitute judge on failure to retire; judicial discipline.**

Any person alleging that circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct. In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefore, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint.

(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

(3) After expeditiously reviewing a complaint, the chief judge, by written order stating his reasons, may—

(A) dismiss the complaint, if he finds it to be (i) not in conformity with paragraph(1) of this subsection, (ii) directly related to the merits of a decision or procedural ruling, or (iii) frivolous; or

(B) conclude the proceeding if he finds that appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events.

The chief judge shall transmit copies of his written order to the complainant and to the judge or magistrate whose conduct is the subject of the complaint.

(4) If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall promptly—

(A) appoint himself and equal numbers of circuit and district judges of the circuit to a special committee to investigate the facts and allegations contained in the complaint;

(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and

(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under this paragraph.

### Title 28 U.S.C.A. § 455. Disqualification of justice, judge, or magistrate.

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

### Title 28 U.S.C.A. § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the final decisions of the district courts of the United States, the United states District Court for the District of Canal Zone, the District of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States of Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections1292 (c ) and (d) and 1295 of this title.

**Title 28 U.S.C.A. § 1651. Writs.**

(a) The Supreme Court and all courts established by Act of congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principals of law.

(b) The alternative writ or rule nisi may be issued by a judge of a court which has jurisdiction.

**Title 28 U.S.C.A. § 2403. Intervention by United States or a State constitutional question.**

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States t intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

◆

## Federal Rules of Civil Procedure:

### Rule 38. Jury Trial of Right.

(a) Right preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of a jury trial. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(e) Admiralty and Maritime Claims. These rules shall not be construed to create a right to trial by jury of the issues in an admiralty or maritime claim within the meaning of Rule 9(h).

**Rule 60. Relief From Judgment or Order.**

(b) Mistakes; Inadvertence Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the. court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time a new trial under Rule 59(b); (3) fraud (heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court.

Writs of coram nobis, coram vobis, audita querela, and bills of review, and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

◊

**Federal Rules of Appellate Procedure:**

**Rule 4(a)(B)(i):** "If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered."

**Rule 44. Case Involving a Constitutional Question When the United States Is Not a Party.**

If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

◊

**United States District Court for the District of Columbia:**

## Local Rule 40.5
## RELATED CASES

### (a) DEFINITION.

A related case for the purpose of this Rule means as follows:

(1) Criminal cases are deemed related when (i) a superseding indictment has been filed, or (ii) more than one indictment is filed or pending against the same defendant or defendants, or (iii) prosecution against different defendants arises from a common wiretap, search warrant, or activities which are a part of the same alleged criminal event or transaction. A case is considered pending until a defendant has been sentenced.

(2) If a civil forfeiture proceeding is filed concerning a criminal defendant, or a defendant is charged in a criminal case while a civil forfeiture proceeding is pending concerning that defendant, the civil and criminal cases are to be deemed related.

(3) Civil, including miscellaneous, cases are deemed related when the earliest is still pending on the merits in the District Court and they (i) relate to common property, or (ii) involve common issues of fact, or (iii) grow out of the same event or transaction or (iv) involve the validity or infringement of the same patent. Notwithstanding the foregoing, a case filed by a pro se litigant with a prior case pending shall be deemed related and assigned to the judge having the earliest case.

However, if a judge in the interest of judicial economy, consolidates a significant number of similar pro se prisoner complaints, or has a single case with a significant number of pro se prisoner plaintiffs, and any of those prisoners later files a new complaint which is unrelated to the subject matter of the consolidated cases or the multiple plaintiffs' case, the judge who receives the new case as related may, if he or she chooses, refer the new case to the Calendar Committee for random assignment.

(4) Additionally, cases whether criminal or civil, including miscellaneous, shall be deemed related where a case is dismissed, with prejudice or without, and a second case is filed involving the same parties and relating to the same subject matter.

**(b) NOTIFICATION OF RELATED CASES.**

The parties shall notify the Clerk of the existence of related cases as follows:

(1) At the time of returning an indictment the United States Attorney shall indicate, on a form to be provided by the Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States District Court. The form shall be mailed to all defense counsel along with the notification of the arraignment. Any objection by the defendant to the related case designation shall be served on the U.S. Attorney and filed with the Clerk within 10 days after arraignment.

(2) At the time of filing any civil, including miscellaneous, action, the plaintiff or his attorney shall indicate, on a form to be provided by the

Clerk, the name, docket number and relationship of any related case pending in this court or in any other United States Court. The plaintiff shall serve this form on the defendant with the complaint. Any objection by the defendant to the related case designation shall be filed and served with the defendant's first responsive pleading or motion.

(3) Whenever an attorney for a party in a civil, including miscellaneous, or criminal action becomes aware of the existence of a related case or cases, the attorney shall immediately notify, in writing, the judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties. Upon receiving information from any source concerning a relationship between pending cases, the Clerk shall transmit that information in writing to the judges on whose calendars the cases appear and to all parties to the proceeding.

**(c) ASSIGNMENT OF RELATED CASES.**

Related cases noted at or after the time of filing shall be assigned in the following manner:

(1) Where the existence of a related case in this court is noted at the time the indictment is returned or the complaint is filed, the Clerk shall assign the new case to the judge to whom the oldest related case is assigned. If a judge who is assigned a case under this procedure determines that the cases in question are not related, the judge may transfer the new case to the Calendar Committee. If the Calendar Committee finds that good cause exists for the transfer, it shall cause the case to be reassigned at random. If the

Calendar Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(2) Where the existence of related cases in this court is revealed after the cases are assigned, the judge having the later-numbered case may transfer that case to the Calendar Committee for reassignment to the judge having the earlier case. If the Calendar Committee finds that good cause exists for the transfer, it shall assign the case to the judge having the earlier case. If the Calendar Committee finds that good cause for the transfer does not exist, it may return the case to the transferring judge.

(3) Where a party objects to a designation that cases are related pursuant to subparagraphs (b)(1) or (b)(2) of this rule, the matter shall be determined by the judge to whom the case is assigned. Any party may appeal to the Calendar Committee from the trial judge's decision by filing an appropriate motion with the Clerk within three days after notification of the judge's decision. The Calendar Committee in its discretion may grant a hearing or decide the appeal on the papers. The decision of the Calendar Committee shall be final.

**(d) MOTIONS TO CONSOLIDATE.**

Motions to consolidate cases assigned to different judges of this court shall be heard and determined by the judge to whom the earlier-numbered case is assigned. If the motion is granted, the later-numbered case shall be reassigned in accordance with section c of this Rule.

**(e) REFERRALS TO A SINGLE JUDGE BY THE**

**CALENDAR COMMITTEE.**

Upon a finding by the Calendar Committee that two or more cases assigned to different judges should be referred for a specific purpose to one judge in order to avoid a duplication of judicial effort, the Calendar Committee may enter such an order of referral. The order shall be with the consent of the judge to whom the cases will be referred and shall set forth the scope of authority of said judge. Unless otherwise provided, such an order shall not transfer any cases nor affect the assignment of future cases.

◊